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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Alfred C. Sikes, Chairman

James H. Quello

*Patricia Diaz Dennis

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Andrew C. Barrett

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*Commissioner Dennis resigned effective October 1, 1989.

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-475

In the Matter of

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(Broken Arrow and Bixby, Oklahoma,	
and Coffeyville, Kansas)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Policy and Rules Division:

1. The Commission has before it petitions for reconsideration filed by Midwest Broadcasting Company, Inc. ("Midwest"), licensee of Station KQQF(FM), Channel 255A, Coffeyville, Kansas, Demaree Media, Inc. ("Demaree"), licensee of KKEG(FM), Channel 221A, Fayetteville, Arkansas, and KOTV, Inc. ("KOTV"), licensee of KOTV(TV), Channel 6, Tulsa, Oklahoma, of the *Report and Order* in this proceeding, 3 FCC Rcd 6507 (1988). The *Report and Order* substituted Channel 221C2 for Channel 221A at Broken Arrow, Oklahoma, and modified the license of KCMA, Inc. ("KCMA") for Station KCMA(FM) at Broken Arrow accordingly. It also substituted Channel 255A for Channel 221A at Coffeyville, Kansas, and modified the license of Midwest for Station KQQF(FM) accordingly. Finally, it denied a counterproposal to substitute Channel 287C2 for Channel 221A at Broken Arrow and Channel 221A for Channel 287A at Bixby, Oklahoma. KCMA filed comments in response to Midwest's petition for reconsideration and a consolidated opposition to Demaree's and KOTV's petitions for reconsideration. Midwest filed comments in response to Demaree's petition. Demaree and KOTV filed reply comments.

2. Midwest's petition for reconsideration requests that the Commission extend the effective date of the modification of Midwest's license for Station KQQF(FM) to operate on Channel 255A. Midwest argues that it cannot implement the change in frequency by the date specified in the *Report and Order*. Midwest claims that the modification requires Midwest to change the station's operating frequency, conduct the necessary proofs of performance, and implement an advertising campaign. Midwest requests that the effective date be extended to the date by which either Station KCMA(FM) or Station KQQF(FM) is prepared to commence program test authority on the modified allotment, whichever is earlier. Midwest also notes that it filed a request for special temporary authority to continue operation on Channel 221A.

3. In reply comments, KCMA states that it has no objection to Midwest's petition for reconsideration. KCMA claims that it must relocate its tower and receive a construction permit before commencing operation on Channel 221C2 at Broken Arrow, and that it would be unable to do so before the effective date in the *Report and Order*. KCMA notes that its counsel contacted the Commission's Audio Services Division and Policy and Rules Division and was assured that Midwest would not be in violation of the terms of its license were it to continue to operate on Channel 221A for a reasonable period of time.

4. In its petition for reconsideration, Demaree argues that the Commission failed to adequately consider the possibility of interference to KOTV and the adverse effect that the Broken Arrow substitution may have on the potential for development of noncommercial FM radio service. Demaree claims that the *Report and Order* regards the preclusion analysis as "somewhat inconclusive given the late submission of [KCMA's] preclusion study. Demaree claims that had the Commission accepted Midwest's counterproposal, KCMA would have received its upgrade, preclusion and interference concerns would have been eliminated, and the Commission could have adopted Demaree's counterproposal requesting the substitution of Channel 221C2 for Channel 221A at Fayetteville, Arkansas, the modification of Demaree's license to specify the higher powered channel, and the substitution of Channel 268A for Channel 221A at Booneville, Arkansas.[1]

5. In its petition for reconsideration, KOTV argues that the Commission failed to adequately consider KOTV's allegations that Channel 221C2 operations could cause significant interference to KOTV's television station. KOTV claims that when the Commission developed its policies limiting consideration of interference to Channel 6 operations to interference caused by noncommercial educational stations operating on Channels 220 and below, Channel 221 was restricted to Class A operations. KOTV argues that the public interest requires consideration of the increased potential for Channel 6 interference resulting from higher powered operations on Channel 221. KOTV argues that the Commission has a stringent statutory responsibility to act to prevent interference, and that prevention of interference is a goal of Commission policies. KOTV also argues that, should the Commission affirm its decision in the *Report and Order*, the construction permit for Channel 221C2 at Broken Arrow should be expressly conditioned to require the permittee to take all necessary actions to correct any interference which may be caused to KOTV as the result of operations on the new channel.

6. KCMA submitted a consolidated opposition to the petitions for reconsideration. KCMA, citing Section 1.106(e) of the Commission's rules, alleges that KOTV's petition is procedurally defective because KOTV failed to include an affidavit from an engineer showing that electrical interference will be caused to the station within its normally protected contour. KCMA also argues that KOTV's petition raises the same claims that were rejected in the *Report and Order*. KCMA notes that the *Report and Order* states that the Commission's sole concern with upgrades on Channel 221 in markets where there is a television Channel 6 is the possibility of reducing spectrum space available to non-commercial broadcasters, and that the Commission has rejected arguments that it should extend power restrictions to Channel 221. KCMA claims

that KOTV has failed to show that interference would occur. Furthermore, KCMA is unsure of the conditions that KOTV wants the Commission to impose on KCMA's construction permit. As for the Demaree petition, KCMA argues that Demaree mischaracterizes the *Report and Order* in stating that the record regarding preclusion of noncommercial services was "somewhat inconclusive". KCMA points out that the *Report and Order* stated that there were no significant errors in KCMA's preclusion study. KCMA adds that the Commission could have requested further comments if it was not satisfied with the data. KCMA claims its study showed conclusively that there would be no effect on future non-commercial service resulting from its proposal.

7. In reply comments, KOTV argues that the Commission's rules require submission of an engineering statement only when new allegations of interference are made for the first time in a petition for reconsideration. KOTV claims that its petition did not argue that new or different kinds of interference would result, but instead argued that the Commission erred as a matter of law in failing to accord proper weight to the showing in KOTV's initial pleadings that interference could result from the Broken Arrow channel substitution. KOTV maintains that an engineering statement would have repeated claims made in the engineering statement it filed in comments to the *Notice of Proposed Rule Making*. KOTV also claims that KCMA does not deny that the channel substitution would cause interference to KOTV's operations. KOTV repeats its request that the construction permit for KCMA, if issued, require KCMA to correct interference associated with its operations on Channel 221C2.

8. After careful consideration of the pleadings filed in this docket, we deny Midwest's petition for reconsideration. When the Commission establishes an effective date for a license modification, it is expected that the licensee will be able to initiate the necessary modifications by that date. However, as KCMA acknowledges, the Commission will not consider a licensee to be in violation of the terms of its license if it continues to operate on an existing channel for a reasonable period of time following the effective date in a modification. The Commission has stated that "it is generally not necessary for the [modification] to take place until utilization of the existing frequency actually prevents a newly authorized station from inaugurating service."[2] Therefore, it was unnecessary for Midwest to seek reconsideration, and its request for reconsideration is denied.

9. We also deny KOTV's petition for reconsideration. KOTV is unpersuasive in claiming that we failed to act in the public interest regarding the possibility of interference to KOTV from Channel 221C2 at Broken Arrow. As we noted in the *Report and Order*, the Commission limits consideration of interference by FM stations to Television Channel 6 operations to FM stations operating between Channels 201 and 220. We also determined that KOTV failed to submit evidence that its circumstances are different from Channel 6/commercial FM situations in general or that there is sufficient interference potential to warrant a general rule making considering protection criteria. KOTV, by its own admission, has offered no new allegations regarding the potential for interference resulting from an upgrade at Broken Arrow. As a result, we deny KOTV's petition for reconsideration.

10. Finally, we deny Demaree's petition for reconsideration. Demaree offers no new evidence regarding either the potential for interference to KOTV or the preclusion of additional noncommercial educational FM service in the area. Demaree mischaracterizes our characterization in the *Report and Order* of KCMA's preclusion study. We stated that while KCMA submitted its preclusion study in reply comments and therefore we received no responsive comments addressing it, a review of the study discovered no significant errors. Therefore, Demaree has failed to raise any grounds for reconsideration and its petition is denied.

11. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Midwest Broadcasting Company, Inc., IS DENIED.

12. IT IS ALSO ORDERED, That the petition for reconsideration filed by KOTV, Inc., IS DENIED.

13. IT IS ALSO ORDERED, That the petition for reconsideration filed by Demaree Media, Inc., IS DENIED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Michael Ruger, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Demaree's proposal was rejected in the *Report and Order* because it was technically deficient when filed. Demaree now submits a different counterproposal and requests that we consider it as a new petition for rule making. Demaree requests the substitution of Channel 221C2 for Channel 221A at Fayetteville and the modification of its license to specify the higher powered channel, and the substitutions of Channel 222A for Channel 223A at Heavener, Oklahoma, Channel 223A for Channel 222A at Roland, Oklahoma, Channel 287C2 for Channel 221C2 at Broken Arrow, and Channel 221A for Channel 287A at Bixby to accommodate the Fayetteville substitution. Demaree's new counterproposal cannot be considered in this proceeding because it was not submitted in initial comments as required by Commission rule 1.420(d). Furthermore, Demaree's counterproposal is not acceptable for consideration as a petition for rule making. A staff review of the proposal shows that Channel 223A at Roland would be short-spaced to Demaree's proposal to substitute Channel 222A at Heavener, and to Channel 223C1 at Joplin, Missouri. Accordingly, we deny Demaree's request to consider its petition for reconsideration as a petition for rule making. Midwest's comments to Demaree's petition for reconsideration, that portion of KCMA's opposition addressing Demaree's proposal, and Demaree's reply are dismissed as moot.

[2] *See Orders to Show Cause (Albany, Buffalo, Ilion, and Utica, New York and Boston, Massachussetts)*, 2 FCC Rcd 4300, n. 12 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-77

In the Matter of

Amendment of Section 73.202(b)	RM-5213
Table of Allotments	RM-5946
FM Broadcast Stations	
(Baldwin, Florida, Watertown, Florida, and St.Marys, Georgia.[1])	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* in this proceeding proposing the allotment of Channel 227A to Baldwin, Florida. 2 FCC Rcd 2033 (1987). Casey Broadcasting Co., Inc. and Marlene V. Borman filed counterproposals. Radio Representatives, Inc. and Jones College filed supporting comments. General Broadcasting of Florida, Inc. filed a "Motion to Consolidate Proceedings." Casey Broadcasting Co., Inc., Emission Radio de Balmaseda, Inc., and General Broadcasting of Florida, Inc. filed reply comments. For the reasons discussed below, we are allotting Channel 289A to Baldwin, Florida, Channel 271A to Watertown, Florida, and Channel 227C2 to St.Marys, Georgia.

BACKGROUND

2. This proceeding began with the filing of a petition for rule making by Northeast Florida Radio, Inc. ("Northeast") proposing the allotment of Channel 287A to Fernandina Beach, Florida. Thereafter, Radio Representatives, Inc. ("RRI") filed a separate petition for rule making proposing a conflicting Channel 287A allotment at Baldwin, Florida. In order to provide for the possibility of allotting FM channels to both communities, we issued two *Notices of Proposed Rule Making*. The first *Notice* proposed the allotment of Channel 287A to Fernandina Beach, Florida. 2 FCC Rcd 741 (1987). In the separate *Notice* in this proceeding, we proposed the allotment of Channel 227A to Baldwin instead of Channel 287A in order to accommodate Channel 287A at Fernandina Beach. This procedure avoided the need to institute a comparative rule making proceeding with respect to the conflicting rule making petitions for Channel 287A at Baldwin and Fernandina Beach, Florida.

3. Prior to the adoption of *Notices* for Baldwin and Fernandina Beach, we adopted a *Report and Order* in MM Docket No. 85-376 allotting Channel 293A to Ponte Vedra Beach, Florida. 2 FCC Rcd 1182 (1987). In response to the *Notice of Proposed Rule Making* in MM Docket No. 85-376 proposing the allotment of Channel 293A to Ponte Vedra Beach, General Broadcasting of Florida, Inc. ("General Broadcasting"), licensee of Station WCAT-FM, Channel 294C1, Leesburg, Florida, filed a counterproposal proposing the allotment of Channel 227A to Ponte Vedra Beach. In its counterproposal, General Broadcasting stated that the proposed allotment of Channel 293A to Ponte Vedra Beach would preclude grant of its application to maintain full Class C status at Station WCAT-FM (File No. BPH-860310II). In denying the General Broadcasting counterproposal, we noted that a Channel 227A allotment at Ponte Vedra Beach would preclude a Channel 227A allotment at Baldwin. Shortly thereafter, we adopted a *Notice of Proposed Rule Making* in MM Docket No. 87-77 proposing Channel 227A for Baldwin. General Broadcasting filed a petition for reconsideration directed against the *Report and Order* allotting Channel 293A to Ponte Vedra Beach, Florida.

4. General Broadcasting filed comments and a "Motion to Consolidate Proceedings." In its comments, General Broadcasting refers to its petition for reconsideration in the Ponte Vedra Beach proceeding. General Broadcasting suggests that Channel 223A be allotted to Ponte Vedra Beach in order that Channel 227A may be allotted to Baldwin and that Channel. 287A may be allotted to Fernandina Beach. This would, in turn, permit grant of its application to maintain full Class C status at Station WCAT-FM. To achieve this result, General Broadcasting requests that the docketed proceedings for Ponte Vedra Beach, Baldwin and Fernandina Beach be consolidated.

5. Casey Broadcasting Co., Inc. ("Casey"), licensee of Station WLKC, Channel 228A, St.Marys, Georgia, filed a counterproposal.[2] This counterproposal proposed the substitution of Channel 227C2 for Channel 228A at St. Marys and modification of the Station WLKC license to specify operation on Channel 227C2. In its counterproposal, Casey states that its proposed Channel 227C2 upgrade would enable Station WLKC to serve approximately 433,556 more persons. In order to accommodate its upgrade and a new allotment at Baldwin, Casey proposes alternate Channel 289A for Baldwin. To allot Channel 289A to Baldwin, it was necessary for Casey to propose the substitution of Channel 271A for Channel 289A at Watertown, Florida.

DISCUSSION

6. We dismiss the "Motion to Consolidate Proceedings" filed by General Broadcasting because General Broadcasting would no longer be aggrieved by any allotment that we may make to Baldwin, Fernandina Beach or Ponte Vedra Beach. On May 10, 1988, General Broadcasting amended its application, which had originally proposed to maintain full Class C status for Station WCAT-FM, to specify Class C1 facilities. The amended application was granted on June 7, 1988. As a result of that action, the Table of FM Allotments is amended to reflect a Class C1 allotment for Leesburg. *See Reclassification of FM Facilities Pursuant to Broadcast Docket No. 80 - 90*, 2 FCC Rcd 2124 (1987). After the Table is amended, the prescribed procedure for General Broadcasting to attain Class C status for Station WCAT-FM would be to file a petition for rule making. General Broadcasting has not done so. In fact, in its Petition for Leave to Amend in BPH-860310II, General Broadcasting stated that specifying Class C1 facilities would end "litigation surrounding retention of Gen-

eral's Class C status." As a result, General Broadcasting is not affected by any channel which we may allot at Baldwin, and there is no reason to consolidate any of these proceedings.

7. We will allot Channel 289A to Baldwin, Florida as a first local service. [3] In order to allot Channel 289A to Baldwin, we are also substituting Channel 271A for Channel 289A at Watertown, Florida.[4] In addition, we are substituting Channel 227C2 for Channel 228A at St. Marys, Georgia, and modifying the license of Station WLKC to specify operation on Channel 227C2.[5] In a related context, we are dismissing the counterproposal filed by Marlene V. Borman proposing the allotment of Channel 227A for Orange Park, Florida. This counterproposal was filed on June 9, 1987. Section 1.420(d) of the Commission's Rules specifically requires counterproposals to be filed by the comment date in a rule making proceeding. Inasmuch as the comment date in this proceeding was June 1, 1987, this counterproposal was untimely and will not be considered. *See Ocilla, Georgia*, 3 FCC Rcd 4765 (1988).

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the Table of FM Allotments, Section 73.202(b) of the Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel No.
Baldwin, Florida	289A
Watertown, Florida	271A
St.Marys, Georgia	227C2

9. IT IS FURTHERED ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Casey Broadcasting Co., Inc. for Station WLKC, St. Marys, Georgia, IS MODIFIED to specify operation on Channel 227C2 in lieu of Channel 228A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

10. The window period for filing applications for the Channel 289A allotment at Baldwin, Florida, will open on **November 14, 1989,** and close on **December 14, 1989.**

11. IT IS FURTHER ORDERED, That the counterproposal filed by Marlene V. Borman to allot Channel 227A to Orange Park, Florida, IS DISMISSED.

12. IT IS FURTHER ORDERED, That the "Motion to Consolidate Proceedings" filed by General Broadcasting of Florida, Inc. IS DISMISSED.

13. IT IS FURTHER ORDERED, That a copy of this *Report and Order* be sent by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Louis D. Bolton II, 3821 Cove Drive, Birmingham, Alabama, 35213.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Watertown, Florida, and St. Marys, Georgia have been added to the caption.

[2] Public notice was given on June 23, 1987 (Report No. 1665).

[3] This will require a site restriction of 10.5 kilometers (6.5 miles). The reference coordinates for Channel 289A at Baldwin, Florida are 30-19-18 and 82-00-54.

[4] On August 29, 1989, we granted a construction permit for the Channel 289A allotment at Watertown, Florida, to Louis D. Bolton II conditioned on the outcome of this proceeding (File No. BPH-871202MF). Inasmuch as Channel 271A complies with the minimum spacing requirements at the site specified in the outstanding construction permit, the permittee need only specify Channel 271A in its covering license application (Form 302). The reference coordinates for the Channel 271A allotment at Watertown are 30-11-47 and 82-40-48.

[5] The reference coordinates for Channel 227C2 at St.Marys, Georgia are 30-43-43 and 81-46-53.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-412

In the Matter of

Amendment of Section 73.202(b), RM-6735
Table of Allotments,
FM Broadcast Stations.
(Rayville, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Allocation Branch:

1. Before the Commission for consideration is a petition for rule making[1] filed by Ken Diebel, Delta Communications, Ltd. (petitioner), requesting the substitution of FM Channel 222C2 for Channel 222A at Rayville, Louisiana.[2] Petitioner also requests modification of its license for Station KTJC(FM), Channel 222A, to specify Channel 222C2.

2. We believe petitioner's proposal warrants consideration. Channel 222C2 can be allotted to Rayville, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site. [3] We shall also propose to modify the license of Delta Communications, Ltd. for Station KTJC (FM) to specify operation on Channel 222C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Rayville, Louisiana area, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Rayville, Louisiana	222A	222C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 17, 1989,** and reply comments on or before **December 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Ken Diebel
Delta Communications, Ltd.
1207 1/2 Louisa St.
Rayville, Louisiana 71269

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Delta Communications Ltd's petition was filed as a counter proposal in MM Docket 88--532 but was unacceaptable in that proceeding. Although timley filed, the counterproposal did not contain a certificate of service indicating a copy was served on the petitioner as required by Section 1.420 of the Commission's Rules. Due to the interest in expanding service in the Rayville area, we have accepted the counter proposal as a new petition for rule makin.

[2] Delta Communications license for Station KTJC (FM), Channel 221A, was modified in MM Docket 88-532 to specify operation on channel 222A.

[3] The coordinate for Channel 222C2 at Rayville are 32-14-15 and 91-33-50.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-411

In the Matter of

Amendment of Section 73.202(b), RM-6944
Table of Allotments,
FM Broadcast Stations.
(Hazlehurst, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Allocations Branch:

1. Before the Commission is a petition for rule making filed by Copiah County Broadcasting Co. (petitioner) requesting the substitution of FM Channel 265C3 for Channel 265A at Hazlehurst, Mississippi. Petitioner also requests modification of its license for Station WMDC(FM), Channel 265A, to specify operation on Channel 265C3.

2. We believe petitioner's proposal warrants consideration. Channel 265C3 can be allotted to Hazlehurst, Mississippi, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] We shall also propose to modify the license of Station WMDC(FM), Channel 265A, to specify operation on Channel 265C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Hazlehurst, Mississippi area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Hazlehurst, Mississippi	265A	265C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 17, 1989,** and reply comments on or before **December 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Albert Mack Smith
Copiah County Broadcasting Co.
P.O. Box 680
Hazlehurst, Mississippi 39083

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 265C3 are 31-50-00 and 90-11-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-410

In the Matter of

Amendment of Section 73.202(b), RM-6828
Table of Allotments,
FM Broadcast Stations.
(Ferriday, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Allocations Branch:

1. Pursuant to the request of Tom Gay, d/b/a The Radio Group (petitioner), licensee of Station KFNV-FM, Channel 296A, Ferriday, Louisiana, the Commission has before it for consideration a petition for rule making requesting the substitution of Channel 296C3 for Channel 296A at Ferriday, Louisiana. Petitioner also requests the modification of its license for Station KFNV-FM at Ferriday to specify operation on the higher class co-channel. The proposal could provide Ferriday with its first expanded FM service. Petitioner states that it will apply for Channel 296C3, if allotted.

2. Channel 296C3 can be substituted for Channel 296A at Ferriday in compliance with the Commission's minimum distance separation requirements at the petitioner's specified site, which is 12.4 kilometers (7.7 miles) east of the city.[1] Accordingly, as requested, we shall propose to modify Station KFNV-FM's license for Channel 296A at Ferriday to specify operation on Channel 296C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Ferriday.

3. In view of the fact that Ferriday, Louisiana, could receive its first wide coverage area FM station the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Ferriday, Louisiana	296A	296C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 17, 1989,** and reply comments on or before **December 4, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James J. Popham, Esquire
700 Camp Street
New Orleans, LA 70130
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates are 31-40-00 and 91-26-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-317

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Lenwood, California)	RM-6328

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 3 FCC Rcd 4230 (1988), issued in response to a petition filed on behalf of Gary Albarez (petitioner), proposing the allotment of Channel 297A to Lenwood, California, as that community's second local FM service. Petitioner filed supporting comments and an erratum in response to the *Notice*. No other comments were received.

2. We believe the public interest would be served by allotting Channel 297A to Lenwood, since it could provide an additional local FM broadcast service to that community.

3. As indicated in the *Notice*, Channel 297A can be allotted to Lenwood in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1] Additionally, as Lenwood is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission obtained concurrence of the Mexican government in the proposal.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with regard to the community listed below, as follows:

City	Channel No.
Lenwood, California	285A, 297A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 297A at Lenwood, California, will open on **November 14, 1989** and close on **December 14, 1989.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates used in this determination are 34-52-30 and 117-06-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-602

In the Matter of

Amendment of Section 73.202(b), RM-6502
Table of Allotments,
FM Broadcast Stations.
(Buena Vista, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989 Released: September 25, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 784 (1989), issued in response to a petition filed by Robert D. and Marjorie M. Zellmer (petitioner) proposing the allotment of Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service. Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. We believe the public interest would be served by allotting Channel 281A to Buena Vista, Colorado, since it could provide a first local FM broadcast service to the community.

3. As indicated in the *Notice*, Channel 281A can be allotted to Buena Vista in conformity with the minimum distance separation requirements set forth in Section 73.207(b) of the Commission's Rules, without the imposition of a site restriction.[1]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No
Buena Vista, Colorado	281A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 281A at Buena Vista, Colorado, will open on **November 14, 1989,** and close on **December 14, 1989.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates for Channel 281A at Buena Vista are 38-50-30 and 106-07-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: September 25, 1989

TREATMENT OF EX PARTE CONTACTS IN PROCEEDINGS CONCERNING SHARED NETWORK FACILITIES AGREEMENTS
SECOND SUPPLEMENTAL SERVICE LIST

Pursuant to Public Notice, DA 89-829 (released July 14, 1989), all of the various formal and informal complaints and tariff investigations involving shared network facility agreements (SNFAs) were designated as restricted proceedings for purposes of Commission Rules governing *ex parte* contacts. As stated in the Notice, any written presentations in CC Docket No. 85-166, Phase I, tariff investigation, the formal complaints listed in Appendix A of the Notice, or the informal complaints listed in Appendix B of the Notice must be served on all parties of record in CC Docket No. 85-166 and all parties to any formal complaints and informal complaints listed in Appendix C of the Notice. The Notice further provided that service would be required on all parties to any substantively related complaints filed in the future. Consistent with the July 14 Notice, a public notice supplementing the original service list was released on August 21, 1989. *See* Public Notice, DA 89-964 (released August 21, 1989).

In accordance with the July 14 Notice, we hereby further amend the service list contained in Appendix C of that Notice to include the following parties:

Charles H. Helein, Esquire
Julia A. Waysdorf, Esquire
Dow, Lohnes & Albertson
1255 23rd Street, N.W. 5th Floor
Washington, D.C. 20037
(Add: Advanced Telecommunications Corporation)

Joseph W. Miller, Esquire
The Williams Companies, Inc.
One Williams Center
36th Floor
Tulsa, Oklahoma 74172
(WTG - West, Inc.; WTG - East, Inc.; WTG - Central, Inc.)

Josephine S. Trubek, Esquire
Corporate Counsel
RCI Corporation
Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646-0700

As stated in the July 14 Notice, this action is taken pursuant to Section 1.1200(a) of the Commission's Rules, 47 C.F.R. § 1.1200(a), which permits the Commission, in its discretion, to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires.

For further information, contact Kurt A. Schroeder at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WESTERN UNION CORPORATION,
Complainant,

v.

SOUTHERN NEW ENGLAND TELEPHONE COMPANY,	File No. E-89-75
SOUTHWESTERN BELL TELEPHONE COMPANY,	File No. E-89-76
NEVADA BELL,	File No. E-89-77
CINCINNATI BELL TELEPHONE COMPANY,	File No. E-89-78
NEW YORK TELEPHONE COMPANY,	File No. E-89-79
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY,	File No. E-89-80
PACIFIC BELL,	File No. E-89-81
THE MOUNTAIN STATES TELEPHONE COMPANY,	File No. E-89-128
NORTHWESTERN BELL TELEPHONE COMPANY,	
PACIFIC NORTHWEST BELL TELEPHONE COMPANY,	
ILLINOIS BELL TELEPHONE COMPANY,	File No. E-89-129
INDIANA BELL TELEPHONE COMPANY, INC.,	
MICHIGAN BELL TELEPHONE COMPANY,	
THE OHIO BELL TELEPHONE COMPANY,	
WISCONSIN BELL, INC.,	
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,	File No. E-89-130
SOUTH CENTRAL BELL TELEPHONE COMPANY,	
BELL ATLANTIC CORPORATION.	File No. E-89-131

Defendants.

ORDER

Adopted: September 14, 1989 Released: September 25, 1989

By the Chief, Enforcement Division, Common Carrier Bureau:

1. Western Union Corporation (WU) filed formal complaints, pursuant to Section 208 of the Communications Act, 47 U.S.C. § 208, against the above-listed defendants. The complaints allege that the rates charged by defendants for voice grade channel termination (CT) for 1987 through 1988 were unjust and unreasonable to the extent they reflected costs related to "voice grade performance" (VGP) and "facility interface" (FACIF) equipment. They also allege that the rates for metallic CTs in effect for the same period were unjust and unreasonable to the extent they reflected costs associated with circuit equipment, station equipment and large PBXs, which comprise part of defendants' special access service. Subsequently, WU served a "First Set of Interrogatories" on each defendant, pursuant to Section 1.729 of the Commission's Rules, 47 C.F.R. § 1.729. These interrogatories sought information regarding amounts of the disputed costs and the bases for assigning such costs to the voice-grade and metallic CTs.

2. Most of the defendants did not provide the information requested, arguing that the interrogatories were based on a rate-making methodology not employed during the period at issue, and that it would be unduly burdensome to develop the data now, which is, they claim, irrelevant in any event. WU filed a Request for a Joint Status Conference to discuss the answers to the interrogatories "in lieu of filing separate motions to compel responses to its interrogatories . . . ." Request at 1. A joint conference was held at the Commission on July 24, 1989. At that

conference, defendants maintained that they did not have the information WU was requesting, and WU challenged that assertion.

3. Commission staff has studied the 10 interrogatories propounded. The information requested does not appear necessary for defendants to comply with the Commission's cost support requirements implementing Parts 31, 32, 36, 67, and 69 of the Rules. Therefore, we have no reason to conclude that the defendants possess the information requested. We further find that it would be unduly burdensome to require them to develop that information now. However, to the extent that any defendant has pertinent information which it did not supply in answer to these Interrogatories, we direct it to supply such information within 21 days of the release date of this order.

4. As indicated above, it appears that the Interrogatories as propounded would require defendants to develop and create information, which would place an undue burden on them. If, however, Western Union wishes to recast its Interrogatories so that they are more appropriately focused on cost allocation methods actually used by the carriers in developing their tariff filings, Western Union may submit such interrogatories within 30 days of the release date of this order.

5. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that the defendants listed above ARE DIRECTED to submit any additional information they have pertaining to the interrogatories, as discussed above, within 21 days of the release date of this order.

6. IT IS FURTHER ORDERED that Western Union may recast its interrogatories within 30 days of the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SYRACUSE TELEPHONE
COMPANY,
Complainant,

v. File No. E-89-274

SYRACUSE SMSA
LIMITED PARTNERSHIP,
Defendant.

ORDER

Adopted September 15, 1989 Released: September 25, 1989

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On June 27, 1989, Syracuse Telephone Company (STC) filed a formal complaint against Syracuse SMSA Limited Partnership (SMSA) alleging violation of Section 22.9(d)(7) of the Commission's Rules, 47 C.F.R. §22.9(d)(7), in connection with the operation of SMSA's cell site at Otisco, New York. SMSA filed its Answer on August 1, 1989 and sought dismissal of the complaint on the ground that STC's allegations were founded on a faulty premise. Subsequently, on August 2, 1989, counsel for STC requested dismissal of the complaint without prejudice. Because there is no longer a controversy between the parties, we find that it is in the public interest to grant the motion.

2. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, that the Motion to Dismiss filed by Syracuse Telephone Company IS GRANTED.

3. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INTERNATIONAL MESSAGE SWITCHING, CORP. File No. I-T-C-89-122

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 15, 1989 Released: September 25, 1989

By the Chief, International Facilities Division:

1. The above-captioned application filed on June 15, 1989 and corrected by letter of August 11, 1989, by International Message Switching, Corp. (IMS), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched voice and telex services of existing common carriers to provide international switched voice and telex services between the U.S. and various overseas points.[1] The application was placed on public notice on June 28, 1989. No comments were received on the original application.

2. The applicant is a non-dominant domestic resale common carrier. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[2] We find that the market will support additional carriers and that the added competition will be in the public interest. [3]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by IMS.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-122 IS GRANTED IN PART, and IMS is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, and US Sprint's Tariffs F.C.C. Nos. 1 and 2, between the United States and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1988).

8. The request to resell telex services is deferred until the public has an opportunity to comment on the addition to the application.

9. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] On August 11, 1989, IMS filed a letter in connection with its application which indicated that IMS would also resell telex service. The letter was treated as an amendment to the application and was placed on public notice on August 23, 1989. In light of the pendency of IMS' request to resell telex services, this authorization is limited to the resale of switched voice service.

[2] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[3] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP.

Application for authority to acquire and operate facilities for direct service between the U.S. and Algeria and Tunisia and beyond. File No. I-T-C-89-138

Application for authority to acquire and operate facilities for direct service between the U.S. and Uruguay. File No. I-T-C-89-137

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 15, 1989 Released: September 25, 1989

By the Chief, International Facilities Division:

1. The above-captioned applications filed by MCI Telecommunications Corp. (MCI) on July 13 and 14, 1989, request authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct service to Algeria, Tunisia and Uruguay. The applications were placed on public notice on July 19, 1989. No comments were received. Upon consideration of the applications, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the acquisition and operation of the subject facilities by MCI for the provision of direct service between the U.S., on the one hand, and Algeria, Tunisia and Uruguay, on the other hand.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-89-138 and I-T-C-89-137 ARE GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 12 voice-grade satellite circuits between the Etam, WV earth station and an appropriate Atlantic Ocean Region (AOR) satellite, connecting with similar circuits between the satellite and an earth station in Algeria, furnished by MCI's correspondent in Algeria;

b. lease from AT&T and operate 12 voice-grade circuits in the Etam, WV earth station;

c. lease and operate 12 voice-grade circuits between the Etam, WV earth station and MCI's West Orange, NJ office;

d. use the facilities in subparagraphs a, b and c above to provide MCI's regularly authorized services between the U.S. and Algeria and beyond.

e. lease from Comsat and operate 12 voice-grade satellite circuits between the Etam, WV earth station and an appropriate AOR satellite, connecting with similar circuits between the satellite and an earth station in Tunisia, furnished by MCI's correspondent in Tunisia;

f. lease from AT&T and operate 12 voice-grade circuits in the Etam, WV earth station;

g. lease and operate 12 voice-grade circuits between the Etam, WV earth station and MCI's West Orange, NJ office;

h. use the facilities in subparagraphs e, f and g above to provide MCI's regularly authorized services between the U.S. and Tunisia and beyond;

i. lease from Comsat and operate 12 voice-grade satellite circuits between the Andover, ME earth station and an appropriate AOR satellite connecting with similar circuits between the satellite and an earth station in Uruguay, furnished by MCI's correspondent in Uruguay;

j. own and operate 12 voice-grade circuits in the Andover, ME earth station;

k. own and operate 12 voice-grade circuits between the Andover, ME earth station and MCI's West Orange, NJ operating center; and

l. use the facilities in subparagraphs i, j and k above to provide MCI's regularly authorized services between the U.S. and Uruguay and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between MCI and its correspondents in Algeria, Tunisia and Uruguay, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1988).

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CRESCOM TRANSMISSION SERVICES, INCORPORATED — File No. CSG-88-079-P/L-(A)

Application for authority to construct and operate an international multipurpose earth station at Holmdel, New Jersey.

CRESCOM TRANSMISSION SERVICES, INCORPORATED — File No. I-T-C-89-010

Application for authority to establish channels of communication between its Holmdel, New Jersey, earth station and INTELSAT Atlantic Ocean Region satellites for provision of multipurpose services.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 15, 1989 Released: September 25, 1989

By the Chief, International Facilities Division:

1. The above-captioned applications, filed on July 18 and October 20, 1988, respectively, by Crescom Transmission Services, Incorporated (Crescom), request authority, pursuant to Section 214 and Title III of the Communications Act of 1934, as amended, and Sections 201(c)(4), (c)(6), (c)(7) and (c)(9) of the Communications Satellite Act of 1962, as amended, to construct and operate an international multipurpose INTELSAT Revised Standard-A earth station at Holmdel, New Jersey, and to establish channels of communication between that earth station and INTELSAT Atlantic Ocean Region (AOR) satellites for the provision of international telecommunications services. The applications were placed on public notice on August 10 and October 26, 1988, respectively.[1] Comments were received on September 7, 1988, from Bell Atlantic which asked that the application be held due to a discrepancy in what was coordinated. Bell Atlantic withdrew its complaint on September 13, 1988. No other comments were received.

2. Crescom is a non-dominant common carrier authorized by the Commission to provide domestic earth station services at various sites including Holmdel, New Jersey. It now proposes to provide international multipurpose earth station services by means of a 21-meter antenna meeting INTELSAT Revised Standard-A technical parameters. The proposed earth station will operate in the 3700-4200 MHz receiving frequency band and the 5925-6425 MHz transmitting frequency band with an INTELSAT AOR satellite. The station will be used initially to provide restoration capacity for the transoceanic fiber optic cable system being constructed by Private Telecommunications System, Inc. (PSI)[2] Crescomm further indicates that the earth station will be used in the future to provide other services such as teleconferencing for business clients, and video services for news organizations. The earth station will also be capable of providing voice, data, high-speed data, private telephone, public switched telephone (as a connecting carrier for restoration purposes), telex, facsimile, high speed facsimile, computer-to-computer communications, remote printing and remote data processing.

3. In its Report and Order in the *Earth Station Ownership Proceeding*, CC Docket No. 82-540, the Commission established a more open and flexible earth station policy which allowed entities other than the Earth Station Ownership Committee (ESOC) to own and operate international earth stations that access the INTELSAT system. The Order permitted the joint carrier owners of ESOC earth stations to decide among themselves the future of ESOC. [3] The Commission also concluded that when reviewing applications for these international earth stations, it would distinguish between earth stations dedicated to providing IBS and/or television services and multipurpose stations. IBS and/or television earth stations, the Commission found, do not have the same potential for revenue diversion and significant impact on system efficiency as multipurpose earth stations. Consequently, the Commission concluded that it would consider only the minimal legal, financial and technical qualifications of the applicant as required by Sections 308 and 319 of the Communications Act of 1934, as amended, when reviewing applications for IBS and/or television earth stations. Absent special problems, the Commission stated that it would treat these applications as routine and process them expeditiously.

4. With respect to multipurpose stations, the Commission stated that it would continue close scrutiny of applications for construction and operation of these facilities since they tend to raise more complex economic, technical and operational issues that may affect the variety, quality and price of service offered to users. In determining whether the grant of an application for a multipurpose earth station will serve the public interest, the Commission indicated it would conduct an analysis by balancing the possible benefits (*e.g.*, shorter terrestrial hauls, increased user options, lower charges to users, and increased customer base for INTELSAT services) against the possible detriments (*e.g.*, reduced technical efficiency, harmful revenue diversion, service deterioration and higher charges to users) which a particular application may present.[4] However, with the dissolution of ESOC earth station ownership arrangements and the transition to a competitive environment, the issue of harmful revenue diversion from existing ESOC earth stations is no longer a concern.

5. We find that Crescom has the necessary legal, technical and financial qualifications to construct and operate the proposed multipurpose earth station. Crescom is a common carrier pursuant to Section 214 of the Commu-

nications Act of 1934, as amended. The proposed earth station conforms with INTELSAT performance criteria for Revised Standard-A earth stations. Crescom has completed the necessary frequency coordination.

6. Crescom is confident that the services provided through the multipurpose station will be technically efficient and of high quality. In addition, the proposed facility will help increase international service options available to users, contribute to the development of effective international competition and will assist in expanding the customer base for INTELSAT services. Furthermore, Crescom, as a non-dominant carrier subject to competitive forces, does not have the market power to have a significant negative impact on any carrier's ability to provide service to the public. In light of these circumstances, we conclude that grant of the instant application for Crescom to construct and operate the proposed INTELSAT Revised Standard-A multipurpose earth station at Holmdel, New Jersey, will serve the public interest.

7. IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of multipurpose satellite services by Crescom.

8. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-89-010 and CSG-88-079-P/L(A) ARE GRANTED, and Crescom is authorized to:

a. construct and operate the proposed INTELSAT Revised Standard A earth station with one 21-meter antenna at Holmdel, New Jersey, for provision of international communication services;[5] and

b. establish channels of communications between that station and INTELSAT AOR satellites for international telecommunications services between the U.S. and the points listed in the Appendix.[6]

9. IT IS FURTHER ORDERED that before completion of equipment installation and facility activation, the applicant shall provide the Commission with a summary of equipment which was actually installed.

10. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between Crescom and its correspondents and copies of the agreements shall be filed with the Commission within 30 days of their execution.

11. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

12. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1988).

13. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Application File No. CSG-88-079-P/L was amended on August 25, 1988, and the amendment was placed on public notice on August 31, 1988.

[2] Application File No. I-T-C-89-010 indicates that PSI will bear the construction costs for the subject earth station and will own the earth station for the first five years. Crescomm will supervise the construction of and operate the earth station. After five years, title to the earth station will vest in Crescomm.

[3] Earth Station Ownership, 100 FCC 2d 250 (1984).

[4] *Id. at 284.*

[5] This authorization is not to be construed as permitting the provision of any service between earth stations located within the United States.

[6] The applicant did not request authority to lease specific numbers of satellite circuits from the Communications Satellite Corporation (Comsat) to each of the countries to which it proposes to provide service. Under the provisions of the Commission's International Competitive Carrier decision, International Carrier Policies, 102 FCC 2d 812 (1985) non-dominant international carriers are required to request and be granted Section 214 authority to file initial applications for the first circuit(s) to be used to provide each service product to each country to be served. *See* 102 FCC 2d at 845. Therefore, it will be necessary for the applicant to file a Section 214 application requesting the satellite circuits it requests authority to lease from Comsat for use to each country before instituting service.

APPENDIX

Latin America

Antigua Bahamas
Argentina
Aruba
Barbados
Belize
Bermuda
Bolivia
Brazil
Cayman Islands
Chile
Colombia
Costa Rica
Curacao
Dominican Republic
Ecuador
El Salvador
French Guiana
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Martinique
Mexico
Netherlands Antilles
Nicaragua
Panama
Paraguay
Peru
St. Lucia
St. Vincent
Surinam
Trinidad & Tobago
Turks & Caicos Isles
Uruguay
Venezuela

Europe

Austria
Belgium
Cyprus
Denmark
Finland
France
Germany, Fed. Rep.
Greece
Iceland
Ireland
Italy
Liechtenstein
Luxembourg
Malta
Monaco
Netherlands
Norway
Portugal
San Marina
Spain
Sweden
Switzerland
Turkey
United Kingdom
Vatican
Yugoslavia

Middle/Near East, Africa, and Other Europe

Algeria
Angola
Ascension Island
Azores
Bahrain
Benin
Botswana
Bulgaria
Burkina Faso
Burma
Cameroon
Canary Islands
Cape Verde
Central Afr. Rep.
Chad
Congo
Czechoslovakia
Diego Garcia
Egypt
Ethiopia
Gabon
Gambia
Germany, Dem. Rep.
Ghana
Gibralta
Guinea
Hungary
Iran
Iraq
Israel
Ivory Coast
Jordan
Kenya
Kuwait
Lebanon
Lesotho
Liberia
Libya
Madagascar
Malagasy Rep.
Malawi
Mali
Mauritania
Morocco
Mozambique
Niger
Nigeria
Oman
Pakistan
Poland
Qatar
Roumania
Saudi Arabia
Senegal
Sierra Leone
South Africa
Sri Lanka
Sudan
Swaziland
Syria
Tanzania
Togo
Tunisia
Uganda
United Arab Emirates
U.S.S.R.
Yemen
Zaire
Zambia
Zimbabwe

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-161

In the Matter of

Amendment of Part 22 of the
Commission's Rules to Revise Certain
Filing Procedures for Mobile Services
Division Applications and to Eliminate
Form 430

ERRATUM

Released: September 25, 1989

The Report and Order, FCC 88-339, released November 16, 1988, in the above-captioned matter is corrected as follows:

APPENDIX B

AMENDED RULES SECTION

* * * * *

1. Section 22.6(d)(2) is corrected to read as follows:

* * * * *

(2) Non-cellular and Non-initial Cellular Applications. All non-cellular and non-initial cellular applications must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche: i) the name of the applicant; ii) the city and state of the application; and iii) if the application refers to an existing station, the call sign of the station.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

World Communications, Inc.

Application for Authority to Operate Facilities in the Private Transatlantic Telecommunications Cable System for the Provision of Authorized Common Carrier Services to the United Kingdom, the Republic of Ireland and Bermuda and Points Beyond.

File No. I-T-C-89-134

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, Inernational Facilities Division

ERRATUM

Released: September 25, 1989

By the Chief, International Facilities Division:

1. On August 30, 1989, the Chief, International Facilities Division released a Memorandum, Opinion, Order and Authorization to Worlcom International, Inc. (Worldcom) (DA 89-1020). First, the Order at paragraph 6 should read that Worldcom is a corporation organized and existing under the laws of the state of New York.

2. Second, paragraph 17 should read as follows:

Worldcom is authorized to:

(a) acquire by IRU and operate a one-half interest in two DS-2 circuits in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, and points beyond;

(b) acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and the Republic of Ireland, and points beyond;

(c) acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and Bermuda, and points beyond; and

(d) extend these facilities as may be necessary through appropriate domestic connecting facilities.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE & TELEGRAPH CO. File No. I-T-C-89-146

Application for authority to acquire and operate facilities in the Private Transatlantic Telecommunications Cable System for the provision of authorized common carrier service to Bermuda the United Kingdom and beyond.

ORDER AND AUTHORIZATION

Adopted: September 15, 1989 Released: September 25, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on July 28, 1989 by American Telephone and Telegraph Co., (AT&T) requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in the Private Transatlantic Telecommunications Cable System (PTAT-1) for the provision of authorized common carrier services between the U.S., on the one hand, and Bermuda and the United Kingdom (UK), on the other hand, and points beyond. The application was placed on public notice on Aug. 2, 1989. No comments were received.

2. AT&T is a common carrier engaged in provision of interstate and foreign communications services. AT&T currently provides services to Bermuda and the UK via various satellites and cables now in existence, and proposes to supplement these facilities by use of the capacity in PTAT-1 requested in the instant application. AT&T requests authority to acquire by IRU or lease a one-half interest in one E-1 circuit[1] for service to Bermuda and seven E-1 circuits for service to the UK. If the facilities are acquired by IRU, AT&T will pay not more than $350,000 for a one-half interest in one E-1 circuit to Bermuda and not more than $720,000 for a one-half interest in each E-1 circuit to the UK. If the facilites are acquired by lease, AT&T will acquire the facilities pursuant to US Sprint's applicable tariff.

3. The Commission stated in its *Private Submarine Cable Decision* [2] that it would require common carriers wishing to acquire capacity in PTAT-1 to file applications pursuant to Section 214 of the Communications Act. [3] Most recently, on August 22, 1989[4], we granted authority to six common carriers to acquire capacity in the PTAT-1 cable and to use this capacity to provide their authorized common carrier services between the United States and Bermuda, the Republic of Ireland, the UK, and points beyond. We found that those applicants had provided all the information necessary for grant of the applications.[5] In addition, we found that the circumstances surrounding those applications did not raise an economic impact issue.[6] In this instant application, we find that AT&T's request fits into the same category as the six applications granted therein. AT&T has filed all the information necessary under Section 63.01 of the Commission's Rules. Furthermore, AT&T states that it will be using the capacity in PTAT-1 to supplement existing facilities and not to divert any portion of its traffic from the existing common carrier facilities.

4. Upon consideration of the application, we find that authorization of the requested services and facilities are required by the public convenience and necessity.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-89-146 IS GRANTED, and AT&T is authorized to:

a. acquire by IRU or lease a one-half interest in one E-1 circuit in the PTAT-1 cable for the provision of its authorized common carrier services between the United States and Bermuda and points beyond;

b. acquire by IRU or lease a one-half interest in seven E-1 circuits in the PTAT-1 cable for the provision of its authorized common carrier services between the United States and the UK and points beyond; and

c. extend these facilities as maybe necessary through appropriate domestic connecting facilities.

6. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license issued to PSI herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§34-39).

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] An E-1 circuit is equivalent to a capacity of 2.048 Megabits per second (Mbps).

[2] Private Submarine Cable Decision, 100 FCC 2d 1033 (1985).

[3] This requirement was restated in the *International Competitive Carrier* decision, where the Commission determined that it would require non-dominant carriers to file applications to acquire capacity from any future private cable sources. International Competitive Carrier Policies, 102 FCC 2d 812, 845 (1985). Information requirements for Section 214 applications are found in Section 63.01 of the Commission's Rules 47 C.F.R. §63.01.

[4] CICI, Inc. et al, File Nos. I-T-C-89-103 et al., DA 89-1020 (released August 30, 1989).

[5] The Commission places no special burdens on any carrier making an application for private cable capacity. It requires carriers to provide the information required by the Commission's rules to be contained in a Section 214 application. *See* Pacific Telecom, Inc., Request for Clarification of Policies Concerning Use of Independent Cables, File No. ISP-89-002, 4 FCC Rcd 4454 (1989).

[6] The Commission stated that it has authority under its public interest mandate under Section 214 to consider *sua sponte* any economic impact issues, including traffic diversion issues, that may be raised in an application by a common carrier to acquire private cable capacity or to consider such issues when raised by third parties filing comments in response to an application. However, the Commission has stated that it does not anticipate that common carrier acquisition of private cable capacity will normally give rise to such issues. Even if an applicant seeks to acquire a substantial amount of private cable capacity and to offload capacity on a common carrier cable or change a prior commitment for use of capacity in planned common carrier facilities, the Commission statd that the presence of these factors would not be conclusive evidence of economic harm. The Commission further stated that the "[r]esolution of any economic impact issues that may arise, and a determination of whether grant of the application would serve the public interest, would be dictated by the circumstances of the particular case before us." *Id.* at 4456.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT TELECOMMUNICATIONS CORPORATION — File No. I-T-C-89-133

Application for authority to lease and operate facilities for direct service between the U.S. and Turkey, Poland and Kenya.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 18, 1989 Released: September 25, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on July 5, 1989, by TRT Telecommunications Corporation (TRT), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate facilities for direct service to Turkey, Poland and Kenya. The application was placed on public notice on July 12, 1989. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Turkey, Poland and Kenya by TRT.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-133 IS GRANTED, and TRT is authorized to:

a. lease from MCI International Inc. (MCII) and operate four telegraph-grade (50 band) half-circuits derived from previously authorized facilities between the U.S. and Turkey;

b. lease from Western Union Telegraph Co. (WUT) and operate two telegraph-grade (50 band) half-circuits derived from previously authorized facilities between the U.S. and Turkey;

c. use the facilities in a and b above to provide TRT's regularly authorized services between the U.S. and Turkey and beyond;

d. lease from MCII and operate four telegraph-grade (50 band) half-circuits derived from previously authorized facilities between the U.S. and Poland;

e. use the facilities in d above to provide TRT's regularly authorized services between the U.S. and Poland and beyond;

f. lease from WUT and operate four telegraph-grade (50 band) half-circuits derived from previously authorized facilities between the U.S. and Kenya; and

g. use the facilities in f above to provide TRT's regularly authorized services between the U.S. and Kenya and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between TRT and its correspondents in Turkey, Poland and Kenya, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

4. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

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AVAILABLE FOR FILMING.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-110

In re Applications of

EMPIRE STATE BROADCASTING CORPORATION (WWKB) Buffalo, New York	File No. BR-840201WQ
For Renewal of License	
BURSAM COMMUNICATIONS CORPORATION (WTHE)	File No. BP-840430AC
For Construction Permit	

Appearances

Roy R. Russo and *J. Brian DeBoice*, on behalf of Empire State Broadcasting Corporation (WWKB); *Keith E. Putbrese* and *Denise B. Moline*, on behalf of Bursam Communications Corporation (WTHE); and *Larry Miller*, on behalf of the Chief, Mass Media Bureau.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: September 20, 1989 Released: September 27, 1989

PRELIMINARY STATEMENT

1. Empire State Broadcasting Corporation (Empire State) is the licensee of Class I-B clear channel station WWKB[1] [2], operating on 1520 kHz, Buffalo, New York. Bursam Communications Corporation (Bursam) is the licensee of Class II station WTHE, operating on 1520 kHz, Mineola, New York. This proceeding involves Empire State's application for renewal of license and Bursam's request for authority to increase the operating power of WTHE during critical hours[3] from the current authorized 250 watts to 1 killowatt. Bursam's request conflicts with Section 73.187 of the Commission's Rules which limits the power level which Class II stations such as WTHE can radiate during critical hours in the direction of Class I-B co-channel stations such as WWKB. However, because Bursam's application was filed during the "renewal window" for WWKB, the two applications were deemed to be mutually exclusive and designated for hearing. *Hearing Designation Order*, 2 FCC Rcd. 2793 (1987) (HDO).

2. The hearing issues specified in the *HDO*, as modified, were as follows:[4]

> 1. To determine whether Empire State Broadcasting is entitled to a renewal expectancy.
>
> 2. In the event that it is determined that Empire State Broadcasting has not demonstrated that it is entitled to a renewal expectancy, to determine which of the proposals would better provide a fair, efficient and equitable distribution of radio service pursuant to Section 307(b) of the Communications Act of 1934, as amended.
>
> 3. To determine, in the event that it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the [public] interest.
>
> 4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

HDO ¶ 5. In the *HDO*, the Mass Media Bureau denied Bursam's request for waiver of Section 73.187, stating that,

> The standards Bursam proposes and the methods it uses to calculate interference are not those established by our rules. Hence, we cannot accept them as valid grounds for waiver. Calculated according to our standards, interference to WWKB is substantial. Accordingly, Bursam's waiver request is hereby denied.

Id. at ¶ 3.[5] In addition, the Bureau ruled in the *HDO* that Bursam was entitled under *Ashbacker* to a comparative hearing, and that the choice to be made in the hearing was solely one "between WWKB's continued operation and WTHE's proposed power increase." *Id.* at ¶ 4 & n.2.

3. On August 25, 1987, Empire State submitted a "Motion for Partial and Total Summary Decision." That motion sought partial summary decision in Empire State's favor on the designated Section 307(b) issue, total summary decision in its favor on the ultimate issue in the proceeding, and a consequent immediate grant of Empire State's application and a denial of the competing Bursam application. In a hearing conference held November 18, 1987, the Presiding Judge denied the motion after oral argument.[6]

4. On November 25, 1987, Empire State asked the Review Board for leave to appeal the denial of the summary decision motion and submitted an appeal. In response to Empire State's appeal, the Review Board issued *Memorandum Opinion and Order*, 2 FCC Rcd. 7554 (1987); erratum released January 22, 1988 (hereafter *MO&O)*, in which the Board permitted the appeal but did not grant Empire State's ultimate request for summary decision under the Section 307(b) issue and an immediate grant of its application. Instead, the Board sought to provide guidance concerning the "ordering and interpretation" of the issues in the proceeding. *MO&O* at ¶ 7.

5. In its *MO&O*, the Review Board advanced two basic propositions. First, the Board stated that the Presiding Judge was free immediately to consider the possibility of ultimate resolution of the proceeding under the Section 307(b) issue without need first to take evidence on or decide the designated renewal expectancy and standard

comparative issues. *MO&O* at ¶¶ 9-10. Second, the Board accorded Bursam what had earlier been denied by the Mass Media Bureau in the *HDO:* A chance to adduce further evidence that Bursam should be granted a waiver of Section 73.187. The Board stated that, "the first step in any Section 307(b) analysis is to determine whether Bursam has shown any public interest reason(s) for a waiver of" Section 73.198. *Id.* at ¶ 10. The Review Board further noted, however, that:

> We recognize that Bursam's request for a waiver of Section 73.187, based upon its own impermissible method of calculating objectionable interference, was denied in the revised *Hearing Designation Order* . . . nevertheless, we must assume from the fact that the Mass Media Bureau designated Bursam's patently defective application for comparative hearing that it did not intend to preclude Bursam from adducing one or more *different* public interest arguments in favor of a waiver, and to present those in the context of the Section 307(b) issue, where its waiver arguments shall be given a "hard look." Indeed, no other assumption is possible, unless we proceed from the hypothesis that - during the renewal "window" - the Commission's technical rules, carefully developed to preclude objectionable interference and carrying the force of law (*e.g.*, limitations on maximum power, transmitter location, antenna height, etc.) are temporarily inoperative.

Id. at n.16. The practical effect of the Review Board's *MO & O* was thus to focus the proceeding as an initial matter on resolution of the Section 307(b) issue and to reinsert into the proceeding -- as a component of that issue -- the matter of Bursam's request for waiver of Section 73.187.

6. Subsequent to issuance of the Board's decision, a further hearing conference was held on January 13, 1988, at which it was determined that the proceeding would go forward with a hearing on the Section 307(b) issue, including the newly inserted waiver component of that issue.[7] Further hearing conferences were held on March 7, June 2, and November 18 and 30, 1988; and hearing sessions were held on March 28, 29, 30 and 31; April 1 and 5; and July 27, 28 and 29, 1988. The record was closed at the conclusion of the July 29, 1988 hearing session, see *Order*, FCC 88M-2524 (released August 3, 1988), and was thereafter reopened and reclosed during the November 18 and 30, 1988 hearing conferences. *Order*, FCC 88M-3984 (released November 22, 1988); *Order*, FCC 88M-4114 (released December 2, 1988).

7. Presently under consideration are "Renewed Motion For Summary Decision And Supporting Proposed Findings Of Fact And Conclusions Of Law" filed December 5, 1988 by Empire State and "Motion For Summary Decision" and "Proposed Partial Findings Of Fact And Conclusions Of Law In Support Of Motion For Summary Decision" filed December 5, 1988 by Bursam.[8] Empire State renews its request for summary decision in its favor on the Section 307(b) issue, grant of its application for renewal of license of Station WWKB and denial of Bursam's application for change in the facilities of Station WTHE. Bursam, on the other hand, seeks favorable summary resolution of the waiver issue, grant of Bursam's application for an increase in critical hours power to 1 kilowatt, and grant of the Empire State renewal application as modified by the grant of Bursam's application.

FINDINGS OF FACT

A. ***Areas and Populations Served by WWKB and Availability of Other Aural Services***

8. Empire State submitted a study, based entirely on current FCC rules, showing the areas and populations, and the extent of other aural services received, within the existing "primary" (groundwave) and "secondary" (skywave) service areas of WWKB (Empire State Ex. 4).

9. WWKB(AM) is a Class I-B AM facility presently operating on 1520 kHz. Pursuant to Section 73.182(a)(1) of the FCC Rules, Class I stations are "designed to render primary and secondary service over an extended area and at relatively long distances, hence have their primary service areas free from objectionable interference from other stations on the same and adjacent channels and secondary service areas free from objectionable interference from stations on the same channel." Section 73.182(s)(Table) specifies that Class I-B facilities are protected from objectionable interference to the 0.1 mV/m and 0.5 mV/m groundwave contours for co-channel and adjacent channel signals, respectively, during daytime operation; and the 0.5 mV/m groundwave contour for both co-channel and adjacent channel signals during nighttime operation. Class I-B facilities are also afforded protection to their 0.5 mV/m 50% of time skywave contour during nighttime operation from co-channel operations (Empire State Ex. 4).

10. For purposes of Empire State Exhibit 4, distances to groundwave contours of WWKB were taken from Bursam Exhibit 2 data to determine the inverse distance (and M3 for distances beyond the measurement data) (Tr. 1579). Distances to skywave contours were calculated in accordance with Section 73.182(q) of the Rules.

11. An examination was made of other existing commercial aural services which extended into the day and night service areas of WWKB(AM). An area was considered to receive an aural service when it is within the following contours of a licensed or authorized station (where a station has both an authorized and licensed facility, the authorized facility was utilized for this study):

	Daytime Service Contour Towns with Population Greater than 2500	Daytime Service Contour Towns with Population Less than 2500	Nighttime Service Contour
FM	1 mV/m (60 dBu	1 mV/m (60 dBu)	1 mV/m (60 dBu)
AM (Class I)	2 mV/m	0.5 mV/m (Primary 0.1 mV/m	0.5 mV/m Ground[9] 0.5 mV/m 50% of time Skywave
AM (Class II, III, IV)	2 mV/m	0.5 mV/m	Night Light

Distances to contours from FM stations were calculated in accordance with Section 73.313 of the FCC Rules. The average elevations for the eight standard radials were obtained from information on file at the FCC for each FM Station involved in this study.[10] The appropriate effective radiated power (ERP) and antenna height above average terrain (HAAT) were utilized to calculate the distances to the 1 mV/m contours. The population data were taken from 1980 United States census information issued by the Department of Commerce. A polar planimeter was used to determine the area data provided in the Empire State study (Empire State Ex. 4).

POPULATION AND AREAS FOR WWKB (AM)

Daytime Primary Service (out to the 0.5 mV/m groundwave contour)	**Population**	**Area (sq mi)**
0.5 mV/m Groundwave Contour (Interference Free)	1,486,999	5,363

The entire WWKB(AM) daytime primary service area receives service from five or more other aural broadcast services during daytime hours.

Daytime Intermittent Service (0.5 mV/m groundwave contour to 0.1 mV/m groundwave contour	**Population**	**Area (sq mi)**
Intermittent Service Area Total	469,144	7,680
Interference-Free Intermittent Area Total	450,075	7,400

The entire WWKB(AM) daytime intermittent service area receives service from five or more other aural broadcast services during daytime hours.

Nighttime Primary Service	**Populaton**	**Area (sq mi)**
0.5 mV/m Groundwave Contour (Interference-Free	1,486,999	5,363

The WWKB(AM) nighttime primary service area receives other aural broadcast services as follows:

4 Other Services Area (Aural)	18,252	177
3 Other Services Area (Aural)	4,954	76
2 Other Services Area (Aural)	0	0
1 Other Services Area (Aural)	0	0
0 Other Services Area (Aural)	0	0

Nighttime Secondard Service	Population	Area (sq mi)
0.5 mV/m, 50% Skywave Field Contour	55,652,493	214,121

(Empire State Ex. 4, Table 4).

B. ***Extent of Violation of Section 73. 187 of the Rules by Proposed Critical Hours Power Increase of WTHE***

12. Bursam Communications Corporation is the licensee of WTHE(AM), Mineola, New York. WTHE(AM), which like WWKB operates on 1520 kHz, is licensed as a daytime only one kilowatt Class II-D AM facility with reduced power of 0.25 kilowatts during critical hours of operation. The WTHE application proposes to remove the reduction of power during critical hours, thereby allowing sunrise to sunset operation with 1 kilowatt power.

13. Empire State Exhibit 5 describes the maximum inverse field and power WTHE(AM) is allowed during critical hours, pursuant to Section 73.187. The predicted WWKB(AM) 0.1 mV/m groundwave contour, as specified in Bursam Exhibit 2, is the protected contour used for this study.

14. The procedure used to determine the maximum allowable inverse field value allowed from WTHE(AM) to the WWKB(AM) 0.1 mV/m groundwave contour during critical hours is in exact accordance with Section 73.187 of the Commission's Rules.

15. The maximum radiation allowed by WTHE(AM) during critical hours, from a non-directional facility, is 106.7 mV/m at one mile (171.7 mV/m at one kilometer). Applying WTHE(AM)'s present physical antenna system (Tr. 1732) and an inverse field of 190 mV/m (Tr. 1733), power of 0.315 kilowatts would be allowed during critical hours pursuant to Section 73.187. Under other FCC rules governing rounding of AM power, WTHE could apply for up to 310 watts during critical hours (Tr. 1733).

C. ***Bursam Showings in Support of Its Claim to Waiver of Section 73.187***

16. In support of its claim to a waiver of Section 73.187 of the Rules, Bursam offered "several alternative methodologies" to establish the nature and extent of a "distortion zone" within the WWKB 0.1 mV/m contour (Tr. 548:

1. ***Bursam Exhibit 2***

17. Bursam Exhibit 2 located the WWKB groundwave service contours based in part on field intensity measurement data compiled in October 1987. The location of the WTHE groundwave service contours was based on field intensity measurement data compiled in December 1987, as well as 1969 measured data from application no. BL-12542 and from Figure M3.

18. According to Bursam Exhibit 2, WWKB services the following areas and populations:

Contour	Area (sq. km.)	Population
2.0 mV/m	6,410	1,272,122
0.5 mV/m	12,779	1,457,883
0.1 mV/m	31,848	1,851,767

Bursam Exhibit 2 then depicts the predicted area of interference to the WWKB groundwave service from the proposed WTHE 1.0 kw critical hours operation.[11] Assumptions made for this purpose include use of the 10% (undesired) WTHE critical hours skywave signal and an undesired to desired ratio of 1:20. On this basis, WTHE would cause interference to WWKB as follows:

Contour	Area (sq. Km.)	Population
0.1 mV/m	8,227	125,722

A map depicting this area is Figure 20 (page 70) of Bursam Exhibit 2. This single figure (and map) do not reflect the increasing level of interference from SS-2 to SS (or the increased levels of interference before SR+2).

19. The same exhibit depicts the WTHE existing and proposed contours as follows:

	Area (sq. kM)	Population
Present 250 Watt Critical Hours:		
2.0 mV/m	233.6	665,685
0.5 mV/m	974.4	669,023
Proposed 1.0 kW Critical Hours:		
2.0 mV/m	458.9	1,283,402
0.5 mV/m	1,820.0	1,289,471
Gain:		
2.0 mV/m	225.3	617,717
0.5 mV/m	845.6	620,448

20. WTHE, at 1 kw, would provide service to parts of New York, New Jersey, and Connecticut during critical hours. All of the area is considered part of the New York metropolitan area (Empire State Ex. 11, par. II). All of the areas that would be served by WTHE at 1 kw during critical hours already receive service from a large portion of the Class B FM stations serving New York City. Transmitters for the majority of these Class B stations are located atop the Empire State building. The area that would be served by WTHE at 1 kw during critical hours is at present completely served by at least 18 FM operations, at least 5 AM operations, and partially served by at least 4 other FM operations (Empire State Ex. 11).

2. ***Bursam Exhibit 2, Appendix 1***

21. Bursam Exhibit 2, Appendix 1, is a copy of a November 1984 Engineering Statement, previously submitted to the Commission in support of a request for waiver of Section 73.187 which was denied by the Mass Media Bureau in the *HDO* herein. The November 1984 Engineering Statement purports to depict the degree of interference which WWKB's own skywave signal causes to its groundwave signal during cirtical hours. Assumptions made in the November 1984 Engineering Statement include (1) use of the *pre-sunset* diurnal curves from BC Docket No. 82-538 (Figure 1a of Section 73.190 of the Rules) which depict *nighttime* propagation conditions; (2) use of the 10% skywave signal of WWKB as the "interfering" signal; (3) use of a desired to undesired signal ratio of 2:1; and (4) use of "pertinent" vertical angles (rather than angles to the ground, as specified in Section 73.187).

22. The WWKB 10% skywave signal was plotted at sunset (SS), sunset minus one hour (SS-1) and sunset minus two hours (SS-2). (The WWKB 0.1 mV/m groundwave contour was calculated in the November 1984 study without reference to the later October 1987

measurement data used elsewhere in Bursam Exhibit 3.) Bursam's conclusions, based on the November 1984 study, are:

> (a) At sunset, interference from WTHE's 10% skywave signal would not affect WWKB in areas inside the WWKB "distortion zone."
>
> (b) At sunset minus one hour, the WTHE 10% skywave signal would create interference to the WWKB "distortion-free" contour in an area near Jamestown, New York. (Jamestown is approximately 50 miles south-southwest of Buffalo. *See* Bursam's Ex. 2, App. 1, Fig. 16, p. 137). The extent of this SS-1 interference area is not defined by Bursam.
>
> (c) At sunset minus two hours, WTHE would exceed maximum allowable radiation toward WWKB at 13 out of 15 depicted points along the WWKB "distortion-free" contour. Bursam attempts to discount this apparently "detrimental" conclusion by the general suggestion that because the WWKB skywave "builds rapidly" from SS-2, the interference to WWKB would "dissipate in a brief period of time." Again, the extent of the SS-2 interference area is not defined by Bursam.

3. ***Bursam Exhibit 2A***

23. Bursam Exhibit 2A, a February 1988 Engineering Statement of Clarence A. Beverage, consists entirely of argument and "analysis" of other FCC proceedings, the Kahn Power-side system (see discussion below at paras. 37-42) and "discussions" of other Bursam Exhibits (*e.g.*, Bursam Exhibits 2, Appendix 1; 2B; and 2C). No new methods of calculating coverage or interference are contained in Bursam Exhibit 2A. However, calculations of results of other studies are provided in Tables II and III. In addition to the WWKB coverage figures from Bursam Exhibit 2, and the WTHE interference figures from the same exhibit (see paragraph 31, *supra)*, the tables depict:

> (a) The extent of interference from WTHE to WWKB after taking account of the Bursam Exhibit 2A-calculated "distortion zone"

Area (Sq. km.)	Population
1,576	24,081

(Bursam Ex. 2A, Table II)

> (b) The extent of interference from WTHE to WWKB after taking account of the Bursam Exhibit 2C-calculated "distortion zone"

Area (Sq. km.)	Population
2,815	43,018

(Bursam Ex. 2A, Table III)

In each case, however, the times assumed for the depiction of the "distortion zone" are not the same as the SS-2 time assumed for the WTHE interference zone. Whereas the WTHE interference figures are based on SS-2 (Section 73.187), the "Exhibit 2B" and "Exhibit 2C" figures were calculated from a variety of time-sensitive studies (but not including SS-2) in those exhibits. [12]

4. ***Bursam Exhibit 2B***

24. Bursam Exhibit 2B is a February 1988 Engineering Statement prepared by Alvin H. Andrus. This exhibit calculates "self-interference" by the WWKB skywave to its own groundwave, using (a) the skywave to groundwave ratios from BC Docket No. 82-538 -- the pre-sunrise, post-sunset proceeding; (b) the 10% skywave propagation curves "used for predicting co-channel interference on Class III and IV channels"; and (c) the diurnal factors in Section 73.185(k) of the Rules. The computer program used to establish the interfering skywave signal levels also assumed: (a) the authorized standard augmented pattern for WWKB's directional antenna system; (b) minimum and maximum departure angles from Figure 6a of Section 73.190 of the Rules; (c) 10% skywave up to 100 km, then 50% skywave plus 8 dB per Section 73.190(b)(2) of the Rules; and (4) a ratio of 2:1 skywave to groundwave.

25. The distances to the interference areas within the 0.1 mV/m WWKB groundwave contour were tabulated for SS-2, SS-1.75, SS-1.5, SS-1.25, SS-1, and SS-0.75 (Bursam Ex. 2B, Table III (pp.23-24)). No calculations were made for SS-0.50, SS-0.25 and SS. As noted above, selected calculations from Bursam Exhibit 2B were tabulated and presented in Table II of Bursam Exhibit 2A.

5. ***Bursam Exhibit 2C***

26. Bursam Exhibit 2C is a February 1988 Statement of Harry R. Anderson. Mr. Anderson also studied the "skywave fading interference zone" of WWKB, based on his observation that:

> The groundwave service area for WWKB, a Class I station operating on 1520 kHz, is defined in the FCC Rules as that area inside the 0.1 mV/m groundwave contour. This FCC-defined estimate of service area *does not take into account interference* which the station may cause to itself due [to] its own signal reflecting from the ionosphere and returning to earth where it can add out of phase with the groundwave signal. The FCC has assumed that no signal strength variations will occur; that is, that the designated signal level will be present 100 percent of the time. *If having this signal level available 100 percent of the time is regarded as satisfactory service, having it available for a smaller percentage of the time can be regarded as unsatisfactory service.* The addition of the reflected skywave signal will cause signal amplitude variability, or *fading*, which will cause the signal amplitude to be below the 0.1 mV/m groundwave contour level for a substantial percentage of the time. (Emphasis added.)[13]

27. The area subject to study was confined to locations between azimuths 60-240 degrees from WWKB and between the *0.35* and 0.1 mV/m groundwave contours of WWKB (Bursam Ex. 2C). Thus, at the outset, the area of intermittent service between WWKB's *0.5 mV/m* and 0.35 mV/m contours was not studied and is not affected by the alleged "distortion zone." Much of this area (as well as areas *within* the WWKB 0.5 mV/m contour) are affected by WTHE interference (see Bursam Ex. 2A, Figs. 1 and 3) and are not "overlapped" by even claimed "distortion."

28. Anderson's study assumed that such "fading interference" will occur with a 10% time predicted skywave signal equal to or greater than the predicted groundwave

signal, and used a "modified CCIR" method to calculate the zone of interference. Specifically, CCIR Recommendation 435-3 was employed, modified by (a) E Layer reflection altitude of 100 km and (b) 10% skywave assumed to be 10 dB higher than 50% (median) calculated field strength (both modifications described in CCIR IWP 6/4). The Anderson study also computed the vertical departure angle using actual reflection path geometry from transmitter to reflecting E Layer (100 km) to receiver location; used the diurnal curves in Figures 12 and 13 of Section 73.190; added a field strength reduction of *3 dB*;[14] and applied the results to the 0.1 mV/m contour as developed by Mr. Beverage. The comparison of WWKB skywave to groundwave was done for SS-1, SS-0.5, SS, SR, SR+0.5 and SR+1. The results were characterized as showing that "a substantial portion of the areas between the two contours [*i.e., 0.35* and 0.1 mV/m] experiences fading before sunset and after sunrise [and] at sunrise and sunset, *most* of the area between the *0.35* and 0.1 mV/m groundwave contours experiences *fading*. ..." (Emphasis added).[15]

29. As noted above, selected calculations from Bursam Exhibit 2C were tabulated and presented in Table III of Bursam Exhibit 2A.

6. Bursam Exhibit 19

30. Bursam Exhibit 19 studies the WWKB "distortion zone" and the WTHE interference to WWKB during critical hours using skywave propagation methods developed by the International Radio Consultative Committee (CCIR). The WWKB distortion zone was calculated using both the 10% WWKB skywave and the 50% WWKB skywave, both with a desired; undesired ratio of 2:1. The WTHE interference contour was based on its 10% skywave and a ratio of 1:20.

31. The WWKB groundwave field strength was based on conductivities from its 1977 proof of performance, measurements (presumably the October 1977 measurements) previously submitted by Bursam, and Figure M3. Skywave field strength values for both WWKB were based on CCIR recommendations (435-3 as modified by 1WP 6/4, including (a) geomagnetic latitude formulas; (b) assuming E Layer as the dominant ionospheric reflector; (c) setting 10% skywave at 10 dB above the 50% skywave; and (4) adjusting field strength by *2.5 dB).*[16]

32. Antenna radiation for WWKB and WTHE was calculated using FCC antenna formulas in Rules 73.150, 73.152 and 73.160. The highest radiation within the departure (elevation) angle arc was used.

33. The WWKB distortion zone and the WTHE interference areas were calculated for eight critical hour times:

SR	SS
SR + 0.5	SS - 0.5
SR + 1	SS - 1.0
	SS - 1.5
	SS - 2

34. The areas and populations contained in some of the above-described situations were submitted in Tables 12 and 13 of Bursam Exhibit 21. Bursam Exhibit 21, Tables 12 and 13 list area and population data for the WTHE interference zone and the WWKB distortion zone based on Bursam Exhibit 19 CCIR calculations, using both 10% skywave and 50% skywave assumptions for WWKB. According to Bursam Exhibit 21, Table 13 (entry for Fig. 32),[17] the total population and area within the WWKB 0.1 mV/m contour is 1,937,645 persons in a 33,338 sq. km. area. Subtracting the totals "inside" the WTHE interfering contour (disregarding here the "distortion zone"), the population and area of interference from WTHE to WWKB, and their percentages within the WWKB 0.1 mV/m contour, are:

INTERFERENCE BY WTHE TO WWKB
(Disregarding "distortion zone")

Time	Population	Area (sq. km.)
SR	809,011 (41.7%)	29,830 (75.7%)
SR+1	559,917 (28.9%)	24,751 (49.9%)
SS	647,625 (33.4%)	27,553 (55.3%)
SS-2	128,579 (6.6%)	7,820 (8.8%)

Combining data from Bursam Exhibit 19 and Tables 12 and 13 of Bursam Exhibit 21, which include reference to the "distortion zone," the following is shown:

INTERFERENCE BY WTHE TO WWKB AFTER TAKING INTO ACCOUNT WWKB "SELF-INTERFERENCE"
(CCIR Methodology and FCC Antenna Radiation)

	Using WWKB 10 % Shywave		Using WWKB 50% Skywave	
Time	Area (sq. km.)	Population	Area (sq. km.)	Population
SR	4595	246,948	12,778	444,699
SR+1	8122	206,817	12,375	295,318
SS	9111	247,486	13,343	346,654
SS-2	4878	65,396	7,820	128,579

7. Bursam Exhibit 20

35. Bursam Exhibit 20 studies the WWKB "distortion zone" and the WTHE interference areas using the skywave propagation curves and interference definitions as Bursam's consultant Anderson believes are set forth in Exhibit 109 of FCC Docket No. 6741. The WWKB distortion zone was defined as the area between (a) where the ratio of the WWKB groundwave to the 50% WWKB skywave is 2:1 and (b) the WWKB 0.1 mV/m contour. The WTHE interference area is based on the 80% WTHE skywave field strength and a ratio of 37:1.

36. The WWKB groundwave field strength was based (as in Bursam Ex. 19) on conductivities from its 1977 proof, the Bursam (October 1987) measurements, and M3. The skywave field strengths were taken from the 50% and 80% propagation curves included as part of Exhibit 109.

37. Antenna radiation (using FCC antenna formulas), departure angles, diurnal factors and critical hours time calculation paralleled Bursam Exhibit 19.

38. The areas and population contained in some of the above-described situations were submitted in Table 15 of Bursam Exhibit 21. Bursam Exhibit 21, Table 15 lists area and population data for the WTHE interference zone and the WWKB distortion zone based on Bursam Exhibit 20 "Exhibit 109" calculations. According to Bursam Exhibit 20, Table 15 (entry for Fig. 16), the total population and area within the WWKB 0.1 mV/m contour is 1,937,645 persons in a 33,338 sq. km. area. Subtracting the totals "inside" the WTHE interfering contour (disregarding here

the "distortion zone"), the population and area of interference from WTHE to WWKB, and their percentages within the WWKB 0.1 mV/m contour, are:

INTERFERENCE BY WTHE TO WWKB
(Disregarding "distortion zone")

Time	Population	Area (sq. km.)
SR	495,058 (25.5%)	22,817 (68.4%)
SR+1	202,675 (10.5%)	12,980 (38.9%)
SS	432,618 (22.3%)	20,398 (61.2%)
SS-2	- 0 -	- 0 -

Combining data from Bursam Exhibit 20 and Table 15 of Bursam Exhibit 21 which include the "distortion zone", yields the following:

INTERFERENCE BY WTHE TO WWKB AFTER TAKING INTO ACCOUNT WWKB "SELF-INTERFERENCE

(Exhibit 109 Methodology)
Using FCC Antenna Radiation

Time	Area (sq. km.)	Population
SR	7539	176,751
SR+1	5119	57,195
SS	9998	226,411
SS-2	- 0 -	- 0 -

D. ***WTHE's Use of the KAHN Power - side "System"***

39. Bursam's proffer of its Exhibit 2-D, the Kahn POWER-Side system brochure, was "to establish that, as a result of the installation of this system, the perceived objectionable interference that Bursam [WTHE] might cause . . . will be reduced as a result of the installation of this system" (Tr. 1383-1384).

40. Leonard R. Kahn testified (Tr. 1331 *et seq.*) that WTHE has installed a Kahn POWER-Side system which, in essense, raises the power level of one sideband of the AM frequency component, reduces the level of the other sideband, and de-emphasizes the stronger sideband to transmit a flat frequency response wave (Bursam Ex. 2-D; Tr. 1333). The POWER-Side system "dramatically reduces" the "beating" effect of co-channel interference, which Mr. Kahn believes is the "most annoying part of co-channel interference" (Tr. 1337). Assuming that WKBW's carrier is 1 Hertz higher than WTHE's,[18] the usual transmission of two audio waves of equal levels would produce one wave 1 Hertz high and another 1 Hertz low; with POWER-Side, however, the WTHE waves are "substantially different in amplitude" and the "heavy beat" effect is avoided (Tr. 1339-1340). A laboratory test was done on two New York stations (at 570 kHz and 710 kHz) (Tr. 1341). The POWER-Side system does not make the "co-channel interference" inaudiable; it treats the "beating" (annoyance) factor (Tr. 1343-1344). Mr. Kahn disclaimed any expertise concerning daytime co-channel interference (Tr. 1344).

41. As of the date of Kahn testimony, the Kahn POWER-Side system had not been submitted to the FCC, although the Commission already has "very detailed information" concerning Kahn's AM stereo exciter, on which the POWER-Side system is based (Tr. 1349). No data, measurements, objective listener reports or expert listener reports other than Kahn's own anecdotal testimony was presented by Bursam (see Empire State Ex. 10, p. 1). The system is designed for monaural use (Tr. 1345) and "the sideband tuning advantages are limited to tunable [*i.e.*, continuously tunable as opposed to step-tuned] radios" (Tr. 1352). However, Kahn claimed that a reduction in "beating" would be perceived on digitally tuned radios (Tr. 1352, 1379-1380). Digital step-tuned radios are "far more prevalent today in car radios" (Tr. 1360). If WWKB were to use POWER-Side, it could choose which sideband to favor and Mr. Kahn believes either that WTHE "would adjust accordingly" (Tr. 1366) or that "it could be a random situation" and the POWER-Side "still would drop the . . . sideband beat" (Tr. 1368).

42. The management of WTHE reported to Mr. Kahn that it was "absolutely delighted" with the effect of POWER-Side on the listenability of the WTHE signal. "It [POWER-Side] gets them into Harlem, Bedford, Sty[vestant] and Brooklyn. . . Southern New Jersey around Asbury Park and . . . Suffolk County" (Tr. 1372).

43. Any grant of additional (critical hours) power to WTHE based on its use of the Kahn POWER-Side system would have to be rescinded if the system became nonfunctional or was removed (Empire State Ex. 10. p. 2).

44. Neither Kahn's testimony (Tr. 1331 *et seq.*) nor his printed literature (Bursam Ex. 2-D) offer any insight as to the actual improvement on co-channel effect which could derive from use of his POWER-Side compatible Single-Sideband AM modulation system. The anecdotal comments and informal marketing and engineering claims made provide insufficient information upon which to base any conclusions as to the usefulness of the POWER-Side system in reducing co-channel interference from WTHE to the WWKB groundwave signal, should WTHE be authorized additional power during critical hours. Such claims cannot be accepted without substantiation through engineering measurements and listening tests (Empire State Ex. 10, p. 2).

E. ***Empire State's Rebuttal to Bursam's Waiver Showings***

45. Empire State submitted a "rebuttal" study on interference which would result to the existing service area of WWKB in the event of a grant of the proposed critical hours increase in power by WTHE.

46. The Empire State study, (Empire State Ex. 6), shows the objectionable interference caused by the WTHE proposal to areas within the protected 0.1 mV/m groundwave service contour of WWKB during the morning and afternoon critical-hour periods. The interfering signal from the WTHE 1.0 kilowatt operation results from the phenomenon of skywave signal reflection which exists, at varying degrees, throughout the critical-hour periods. Section 73.182(s) of the Rules specifies protection to the groundwave service within the WWKB 0.1 mV/m groundwave contour by a desired-to-undesired ratio of 20-to-1 for co-channel facilities. During the critical-hour periods, objectionable interference from WTHE results within the 0.1 mV/m groundwave contour of WWKB if the 10% skywave field from WTHE is greater than 1/20th the groundwave field of WWKB.

47. By graphing the groundwave field versus distance for select radials extending outward from the WWKB transmitter location, and by determining the skywave field from WTHE to locations along these radials, the WWKB interference-free groundwave contour, resulting from WTHE skywave interference, was determined.

48. Due to the varying intensity of skywave AM signals during the critical-hour periods, studies for several different times during the morning and afternoon critical-hour periods were made. The periods studied are:

June 15th	Sunrise	(4:30 AM)
June 15th	Sunrise + 0.25 hours	(4:45 AM)
June 15th	Sunrise + 0.50 hours	(5:00 AM)
June 15th	Sunrise + 0.75 hours	(5:15 AM)
June 15th	Sunrise + 1.00 hours	(5:30 AM)
June 15th	Sunset	(7:30 PM) June 15th
	Sunset - 0.50 hours	(7:00 PM) June 15th
	Sunset - 1.00 hours	(6:30 PM)
June 15th	Sunset - 1.50 hours	(6:00 PM)
		December 15th
	Sunrise	(7:15 AM)
December 15th	Sunrise + 0.25 hours	(7:30 AM)
December 15th	Sunrise + 0.50 hours	(7:45 AM)
December 15th	Sunrise + 0.75 hours	(8:00 AM)
December 15th	Sunrise + 1.00 hours	(8:15 AM)
December 15th	Sunset - 0.25 hours	(4:30 PM)
December 15th	Sunset - 0.75 hours	(4:00 PM)
December 15th	Sunset - 1.25 hours	(3:30 PM)
December 15th	Sunset - 1.75 hours	(3:00 PM).

The calculations are based on actual sunrise and sunset times at Mineola, New York.[19]

49. For the purposes of rebuttal only, a hypothetical contour was also determined by Empire State for the periods listed above. FCC Clear Channel Hearing Docket 6741, Exhibit Number 109 (April 22, 1946)[20] defines the "distortion zone" as the area where the ratio between a station's own skywave field and its groundwave field is less than 2-to-1 and greater than 1-to-2. A "type C" service was assumed to develop the WWKB "distortion zone" (Tr. 1588-1589, 1662, 1689; Empire State Exs. 8 & 9). The 50 percent skywave field of WWKB was employed for this study, which is specified in Exhibit 109 as appropriate for a type B aural signal. Although "type C" would appear to call for a greater percentage skywave, 50% SW was employed. It was Empire State's engineering consultants' opinion that the methods outlined in Exhibit 109 for the distortion zone calculations as stated above are the best available (Empire State Ex. 6, p. 4).

50. The skywave field values for WTHE and for WWKB were determined for the specific times examined in this study, by applying the methods provided in Section 73.185(k). Section 73.185 applies specifically to pre-sunrise and post-sunset authority; however, tables and graphs are provided within the rule section for *portions* of the morning and afternoon critical-hour periods. For WTHE, the 10 percent skywave field was determined from Section 73.190 (Figure 1a) and applying the following adjustment as specified in Section 73.109(b)(2):

10% skywave field = skywave field + 8 dB.

For WWKB the 50 percent skywave field was determined from Section 73.190 (Figure 1a). Pursuant to Section 73.185, diurnal factors were used to adjust these skywave fields for the specific critical-hour times and locations of the skywave paths studied (Empire State Ex. 6, p. 5).

51. The WWKB(AM) groundwave field values used in Empire State Exhibit 6 were taken directly from Bursam Exhibit 2 or 2A. The ground conductivities listed in Bursam Exhibit 2 were used to determine groundwave field values that are not directly provided in either Bursam Exhibit. For radials not provided by Bursam in its Exhibit 2, Empire State utilized the WWKB(AM) 1977 Proof-of-Performance measurements and FCC Figure M3 conductivity values to calculate the predicted groundwave fields.

52. Empire State Exhibit 6 includes maps showing the objectionable interference within WWKB's 0.1 mV/m groundwave contour created by the skywave signal from WTHE when WTHE operates with a power of 1 kilowatt (Figs. 1A-1R). Each map represents one of the specified critical-hour times listed above. Also included on each map is the "distortion zone" caused by WWKB's own skywave field. For every time examined by the study, the objectionable interference caused by the WTHE skywave field completely encompasses and exceeds the "distortion zone" caused by WWKB's own skywave field.

53. Empire State made a comparison of the population and areas affected by the skywave field from WTHE's one kilowatt operation and the population and areas affected by the skywave field of WWKB. A computer program was utilized to determine the population. A polar planimeter was used to determine the areas. Urbanized population outside of the WWKB 2.0 mV/m groundwave contour (*i.e.*, cities over 2500 persons) was not counted in this study. Only population and land areas within the United States were considered.

WTHE Interference and WWKB "Distortion Zone" Population Data (From Empire State Exhibit 6, Table 4

Time		Population Within the Interference Area Created by WTHE, Within the WWKB 0.1 mV/m Groundwave Contour		Population Within the "Distortion Zone" Area Created by WWKB, Within the WWKB 0.1 mV/m Groundwave Contour	
		Persons	% of Total	Persons	% of Total
June	SR+0.25 (4:30 AM)	660,028	34.1	172,611	8.9
June	SR+0.75 (5:00 AM)	576,191	29.7	112,667	5.8
June	SS-0.50 (7:00 PM)	547,958	28.3	51,769	2.7
June	SS-1.00 (6:30 PM)	440,162	22.7	0	0.0
June	SS-1.50 (6:00 PM)	210,299	10.9	0	0.0
December	SR+0.25 (7:30 PM)	693,928	35.8	220,338	11.4
December	SR+0.75 (8:00 AM)	594,689	30.7	128,944	6.7
December	SS-0.25 (4:30 PM)	579,066	29.9	87,821	4.5
December	SS-0.75 (4:00PM)	447,010	24.6	21,717	1.1
December	SS-1.25 (3:30 PM)	309,763	16.0	0	0.0

WTHE Interference and WWKB "Distortion Zone" Area Data (From Empire State Exhibit 6, Table 4

Land Area With the Interference Area Created by WTHE	Land Area Within the "Distortion Zone" Area Created by

Time		Within the WWKB 0.1 mV/m Groundwave Contour Area (sq Km)	% of Total	WWKB, Within the WWKB 0.1 mV/m Groundwave Contour Area (sq Km)	% of Total
June	SR+0.25 (4:30 AM)	27,286	82.5	6,052	18.3
June	SR+0.75 (5:00 AM)	24,478	74.0	6,080	18.4
June	SS-0.50 (7:00 PM)	24,834	75.1	4,695	14.2
June	SS-1.00 (6:30 PM)	20,349	61.6	0	0.0
June	SS-1.50 (6:00 PM)	12,793	38.7	0	0.0
December	SR+0.25 (7:30 AM)	28,359	85.8	7,507	22.7
December	SR+0.75 (8:00 AM)	25,551	77.3	4,782	14.5
December	SS-0.25 (4:30 PM)	24,860	75.2	3,865	11.7
December	SS-0.75 (4:00 PM)	21,350	64.6	529	1.6
December	SS-1.25 (3:30 PM)	15,291	46.3	0	0.0

WTHE Interference Minus WWKB "Distortion Zone" Population Data (From Empire State Exhibit 6, Table 4A)

Time	Population With the Interference Area Created by WTHE and outside the "Distortion Zone" Area Created By WWKB, Within the WWKB 0.1 mV/m Groundwave Contour Persons	% of Total
June SR+0.25 (4:30 AM)	487,417	25.2
June SR+0.75 (5:00 AM)	463,524	23.9
June SR-0.50 (7:00 PM)	496,189	25.6
June SS-1:00 (6:30 PM)	440,162	22.7 June SS-1.50 (6:00 PM) 210,299 10.9
December SR+0.25 (7:30 AM)	473,590	24.4
December SR+0.75 (8:00 AM)	465,745	24.0
December SR+0.25 (4:30 PM)	491,245	25.4
December SS-0.75 (4:00 PM)	425,293	23.5
December SS-1.25 (3:30 PM)	309,763	16.0

WTHE Interference Minue WWKB "Distortion Zone" Area Data (From Empire State Exhibit 6, Table 4A

Time	Land Area Within the Interference Area Created by WTHE and outside the "Distortion Zone" Area Created by WWKB, Within the WWKB 0.1 mV/m Groundwave Contour Area (sq Km)	% of Total
June SR+0.25 (4:30 AM)	21,234	64.2
June SR+0.75 (5:00 AM)	18,398	55.6
June SR-0.50 (7:00 PM)	20,139	60.9
June SS-1.00 (6:30 PM)	20,349	61.6
June SS-1.50 (6:00 PM)	12,793	38.7
December SR+0.25 (7:30 AM)	20,852	63.1
December SR+0.75 (8:00 AM)	20,769	62.8
December SS-0.25 (4:30 PM)	20,995	63.5
December SS-0.75 (4:00 PM)	20,821	63.0
December SS-1.25 (3:30 PM)	15,291	46.3

54. The matter of "self-interference" and the creation of a "distortion zone" was studied by the Commission in Docket 6741 (the " *Clear Channel* " proceeding) and was included in Exhibit 109 of that Hearing. However, the FCC has not incorporated within the Rules any provision concerning this phenomenon. A Class I station is simply protected to its 0.1 mV/m groundwave contour during critical-hour periods pursuant to Section 73.187, a rule which remains intact notwithstanding past Commission studies of "self interference" (Empire State Ex. 6).

55. To calculate the "distortion zone" caused by WWKb's skywave field, the guidelines set forth in Exhibit 109 of FCC Hearing Docket 6741 were used. Exhibit 109 defined "three types of *groundwave* service of decreasing utility based on the signal level relative to interference of various sorts." The three types of service are:

Service Type	Desired Groundwave Signal mV/m	Undesired SWF Used	Desired/ Undesired Ration
A	1.5	10%	2:1
B	0.5	50%	2:1
C	0.1	not defined	not defined

The desired groundwave signal, above, is based on rural service areas. More densely populated areas would specify higher desired groundwave signal strengths for the three types of service grades. For simplicity, the service type is determined assuming rural service throughout the WWKB 0.1 mV/m groundwave coverage contour, therefore, the service grade is chosen using the groundwave signal strengths given in the above table. The predicted "distortion zone" would decrease if urbanized areas are considered when determining the service type (Empire State Ex. 6).

56. The Empire State study utilized the WWKB 50% skywave field, which corresponds to a type B service, when determining the "distortion zone." [21] By examination of Figure 1-A through 1-R, it is apparent that the predicted "distortion zone" using the 50% skywave field would be located in areas which are receiving service type B or service type C, therefore, 50% was the proper skywave field to use. Though it is not defined by Exhibit 109, a skywave field *greater* than 50% would have been more appropriate for determining "self" interference within a type C service. Using a skywave percentage greater than 50 would predict less "distortion zone," therefore, use of 50% for both B and C type services produces a showing of greater "distortion" (self-interference) than would result if a skywave field of greater than 50% were used for type C service.

CONCLUSIONS

57. The Presiding Judge has before him two motions for summary decision. Bursam seeks grant of its request for waiver of Section 73.187 of the Rules. Empire State requests a dispositive 307(b) determination in its favor. Bursam's request for relief will be considered first.

Bursam's *Waiver Request*

58. Section 73.187 of the Commission's Rules provides in pertinent part:

> (a)(1) Except as otherwise provided in paragraphs (a)(2) and (3) of this section, no authorization will be granted for Class II facilities if the proposed facilities would radiate during the period of critical hours (the two hours after local sunrise and the two hours before local sunset) toward any point on the 0.1 mV/m contour of a co-channel U.S. Class I-A or I-B station, at or below the pertinent vertical angle determined from Curve 4 of Figure 6a of Section 73.190, values in excess of those obtained as provided in paragraph (b) of this section.

What this means is that Bursam, as a Class II station, must protect Empire State's 0.1 mV/m contour during critical hours. Bursam's currently licensed facilities provide such protection by requiring Bursam to reduce power during critical hours from 1 kW to .250 kW.

59. Section 73.187 of the Commission's Rules takes into account the transition period from daytime to nighttime. During daytime hours an AM station's coverage is generally determined by its groundwave. During nighttime hours skywave coverage comes into play. Skywaves bounce off the ionosphere at night and greatly increase an AM station's coverage area and also increase its area for potential interference. During the transition period or critical hours, the conditions which allow for skywaves gradually accumulate or dissipate. *Daytime Skywave*, 27 FCC 587, 589 (1959).

60. Section 73.187 was adopted in the *Daytime Skywave* proceding to provide protection to clear channel stations. The Commission studied the effect of skywave signals during critical hours in order to determine what degree of protection to provide to clear channel stations. Specifically, the Commission observed:

> As to the degree of protection to be afforded, we are convinced that the concept which we tentatively adopted in our 1954 decision is correct, and that the 0.1 - mv./m. groundwave contours of Class I stations should be protectived against the degree of cochannel daytime skywave interference which would otherwise exist at sunset minus 2 hours. It is, of course, possible to consider other alternatives, in either direction, ranging from protection of the 0.1 - mv./m contour at sunset, on the one hand, to no protection at all on the other. It does not appear that any of these other alternatives is to be preferred, keeping in mind the necessity of reaching an appropriate balance between the objectives of sufficient protection and provision for adequate service by a sufficient number of stations during daytime hours. It is apparent that this degree of protection, based as it is on conditions as of sunset minus 2 hours, involves relatively minor limitations upon Class II stations. These restrictions are the least which we can appropriately impose if the service of clear- channel Class I stations -- whose function and purpose is to provide widespread service to large areas and populations, in furtherance of our objective of bringing some service to all - is not to be seriously disrupted by the great number of daytime operations for which applications are now on file and may be expected in the future.

Daytime Skywave, 27 FCC at 595. Thus, the Commission established this protection standard which it determined best met the public interest standard.

61. Bursam contends that its waiver request should be granted because it believes that the Commission's existing protection standard is no longer warranted. Moreover, Bursam argues that Empire State's own self-interference or distortion zone minimizes the effect of Bursam's interference. Furthermore, Bursam claims that its use of the Kahn power-side system of transmission reduces perceived interference. Finally, Bursam alleges that grant of its waiver will further Commission policies such as the improvement of its service by increased coverage, allow the grant of both applications and will not be a precedent for future waiver requests.

62. Bursam asserts, among other things, in support of its first argument, that self-interference and other phenomena render 0.1 mV/m contour service unreliable, that the multiplicity of broadcast outlets undermines continued protection for 0.1 mV/m service, and that most consumer radios are not capable of receiving a 0.1 mV/m signal quality for extended listening. Bursam's argument does not provide a basis for waiver of Section 73.187 and is rejected.

63. Bursam's assault on Sectin 73.187 and the other rules that grant protection to the 0.1 mV/m service areas of Class II stations during daytime hours is addressed to the wrong forum. None of the reasons advanced by Bursam for repeal of these rules is uniquely pertinent to the two stations involved in this particular adjudicative proceeding. All of the contentions apply with equal force to all Class I clear channel stations. Bursam's arguments might be invoked by any other Class II station which, like WTHE, desired to increase its critical hours power in contravention of Section 73.187. Given their general nature, Bursam's contentions might be appropriately raised by Bursam in the Commission's ongoing rule making proceedings concerning technical and allocation standards in the AM band. In this connection, it is noteworthy, as pointed out by Empire State, that in MM Docket No. 87-26,[22] Bursam's parent corporation has contended, as Bursam does here, that continued protection for the 0.1 mV/m contour is unwarranted. Suffice it to say that resolution of this broad policy dispute properly belongs in a rule making proceeding, not a waiver request. The Presiding Judge does not have the authority, even if he were so inclined, to change the protection standards for Class I stations.

64. Bursam's second argument in favor of its waiver is that Empire State's distortion zone further minimizes Bursam's interference. During critical hours Empire State's own skywave signal causes interference to its own groundwave signal at certain locations and times. Much of the evidence in this proceeding involved the calculation

of this distortion zone during critical hours. Bursam argues that since this distortion zone encompasses areas within Empire State's 0.1 mV/m contour, this distortion zone effectively decrease Empire State's protected contour. Bursam argues that this distortion zone area should be excluded from the area in which Bursam is deemed to cause interference to Empire State.

65. Bursam's argument ignores the fact that the Commission's rules already take into account the effect of the distortion zone on a Class I station's 0.1 mV/m protected contours during critical hours. As shown in Exhibit 109 to the Commission's Clear Channel Proceeding, "Method of Computing Service and Interference for Use in Connection with Docket 6741," dated April 22, 1946 (Empire State Ex. 6, App. B), the Commission was well aware of the effects of distortion zones when it adopted the protection standards for clear channel stations. Balancing various considerations, the Commissison chose the 0.1 mV/m contour to protect during critical hours. *Daytime Skywave*, 27 FCC at 595. The Commission's rules acknowledge that service within a station's 0.1 mV/m contour, *i.e.*, its intermittent service area, is subject to some interference.

> *Intermittent service area.* Means the area receiving service from the groundwave of a braodcast station but beyond the primary service area and subject some interference and fading.

Section 73.14 of the Commission's Rules. Moreover, Section 73.182(i) of the Commission's Rules states that only Class I stations are protected from interference from other stations in the intermittent service area, and that this area may be subject to objectionable fading. Since the Commission's rules take into account the effect of a station's distortion zone, there is no basis in the record to exclude Empire State's distortion zone from protection from interference caused by Bursam.

66. To demonstrate that its waiver request would not undermine the policy of Section 73.187, Bursam was required to show that WTHE's proposed 1 kW operation during critical hours would not cause objectionable interference within the 0.1 mV/m groundwave contour of WWKB. Bursam has failed to make this showing. The evidence proves precisely the opposite. As all parties agree, when calculated in accordance with the Commission's rules, the prohibited interference caused by Bursam to Empire State involves 8,227 square kilometers (25.8% of the total service area) and 125,722 persons (6.79% of the total service population).

67. Using Bursam's calculations, which have not been sanctioned by the Commission's rules, Bursam fares no better. In Bursam's Exhibit 19 -- which is Bursam's "centerpiece" exhibit, based as it is on the CCIR methodology which Bursam itself claims to be the most "valid" and "technologically advanced" methodology it has employed (Bursam *PF & C* at ¶¶ 100 & 109-111) -- Bursam's own engineers concluded that *the population within the projected area of interference from WTHE would range between 128, 579 persons as of sunset minus 2 hours and 809, 011 persons at sunrise*. Bursam Exs. 19 & 21, Tables 12 & 13. Even if the WWKB "distortion zone" area which Bursam has projected in its Exhibit 19 is *not* considered to be part of the area of predicted interference from WTHE, and even if the 10% skywave field which Bursam favors *is* employed in calculating the WWKB "distortion zone," Bursam's Exhibit 19 still indicates that *between 65,396 persons at sunset minus 2 hours and 246, 948 persons at sunrise reside within the non - distortion zone area of interference which would be caused by WTHE* [23] (Bursam Exs. 19 & 21, Table 16). These populations are not " *de minimis*, " as contended by Bursam. As the Commission has previously ruled, interference to a population of 13,000 prsons "could not be considered *de minimis* regardless of the percentage of the total service area that may represent." *The Audio House, Inc.*, 2 FCC Rcd. at 3172 (citing *Artlite Broadcasting Co.*, FCC 84-532 (rel. November 13, 1984), *rev. denied, Artlite Broadcasting Co. v. FCC*, 786 F.2d 431 (D.C. Cir. 1986)). The populations which would receive interference from WTHE under Bursam's own Exhibit 19 calculations are *from 5 to 20 times* this size even under Bursam's preferred methodology and even accepting Bursam's legally invalid "distortion zone" theory. When Bursam's invalid "distortion zone" contentions are disregarded, Bursam's projected interference populations rise to *more than 60 times* the level which the Commission has previously held not to be *de minimis*.

68. Bursam's contention that WTHE's use of the Kahn "POWER-Side" equipment supports a waiver of Section 73.187 may be quickly disposed of. To begin with, Bursam's claims concerning the Kahn equipment do not purport to show that the equipment eliminates the objectionable WTHE interference within WWKB's protected service area which would occur as a consequence of the proposed WTHE critical hours power increase, but rather merely that one aspect of the various audible phenomena associated with co-channel interference-- subjectively described as a "beating" should -- would be reduced by WTHE's use of the Kahn equipment. Also, the use of Kahn's equipment is entirely voluntary by licensee and can be changed or terminated at any time. Most important, however, is the fact that basic Commission allocation policies, and requests for waiver of the Commission's basic allocation rules, simply cannot be grounded on the vicissitudes of minor, transient considerations such as the use of Kahn "POWER-Side" equipment. This is particularly true, given that the Kahn equipment is relatively new, is not widely used, and is largely untested. Neither the Commission nor any independent testing laboratory has studied or verified the actual effects which the equipment may have, and the record contains no evidence from which it could be determined with any certainty whether use of the equipment by WTHE (or by *other* stations operating on 1520 kHz) would have *any* effect, either beneficial or detrimental, upon co-channel interference to WWKB. For all of these reasons, Bursam's contentions concerning WTHE's use of the Kahn equipment are plainly insufficient to support a request for waiver of Section 73.187 of the Rules.

69. Bursam's argument that Commission policy favors the improvement of licensed facilities is self-evident. However, the crucial factor that Bursam ignores is that the Commission requires that improvements to licensed facilities must conform to the requirements of its rules. Every applicant seeking to improve its facilities can claim that it is seeking to further a Commission policy, however, that claim alone is not sufficient to warrant a waiver of the Commission's rules.

70. Finally, Bursam urges the Presiding Judge to resolve the "waiver" issue by a "balancing" of proposed gains against proposed losses during critical hours. Bursam's

request is rejected. As Bursam is no doubt aware, the "balancing" approach has never been used to resolve waiver requests and was abandoned as a means of resolving AM interference issues twenty five years agao with the adoption in 1964 of the "go-no-go-rules. *See Report and Order in Docket No. 15084 (Assignment Standards - AM and FM)*, 45 FCC 1515, 1522 (1964), *recon. denied*, 4 RR 2d 1567 (1967). As succintly stated by the Commission in a recent decision,

> In essense, the "go-no-go" concept is the embodiment of our policy of determining the acceptability of AM applications based upon a prohibition against the overlap of certain contours rather than a weighing and balancing of gains and losses in interference area.[24]

The Audio House, Inc., 2 FCC Rcd. 3171, 3173 n. 3 (1987).

71. In sum, Bursam has failed to meet the heavy burden of demonstrating that it is entitled to a waiver of Section 73.187 of the Commission's Rules. *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). Bursam's arguments that Section 73.187 of the Commission's Rules should not be applied in this proceeding are a general attack on the validity of this Rules. As such, these arguments to change the Commission's rules are misplaced in this adjudicatory proceeding. The appropriate place for Bursam to present its contentions is a *rule making* proceeding, not a waiver request. Moreover, Bursam has not presented any public interest factors which would warrant a waiver of this rule. The opposite is true since grant of Bursam's request would undermine a rule integral to the Commission's basic allocation scheme. Therefore its waiver request is denied. Denial of Bursam's waiver request moots consideration of Bursam's further request that Empire State's license be condititioned to permit Bursam to operate with greater power during critical hours.

72. Bursam's failure to justify a waiver of Section 73.187 precludes grant of Bursam's application to increase WTHE's critical hours power level so long as Empire State's Station WWKB continues in operation. The only remaining question is whether summary decision of the Section 307(b) issue should be granted in favor of Empire State. As detailed more fully, *infra*, the record conclusively demonstrates that Empire State is entitled to a dispositive 307(b) preference.

73. In determining which of two or more mutually exclusive applications should be granted pursuant to Section 307(b) of the Communications Act, the Commission traditionally has considered (1) the most equitable distribution of service, based on the relative needs of the proposed service areas for the proposed reception services; (2) the most efficient distribution of facilities, based on the types or classes of frequencies involved, the areas and populations which would receive service, and the power and hours of operation proposed; and (3) the most fair distribution of facilities among the several communities and states, based on the relative needs of the proposed communities of license for an additional transmission service. *Kent-Ravenna Broadcasting Co.*, 22 RR 605, 610-611 (1961); *see e.g., Policy Statement on Section 307 (b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 191, *recon. denied*, 2 FCC 2d 866 (1965) (later overruled in other respects on other grounds) (*Section 307 (b) Policy Statement)*. In addition, the Commission has, in appropriate circumstances, expressed a preference for the continuation of existing service and considered the impact which the grant of a given application would have on international frequency allocation matters.[25] Empire State's renewal application must be preferred under each of these pertinent Section 307(b) decisional criteria and thus is entitled to prevail as a matter of law under the Section 307(b) issue.

74. WWKB is entitled to a dispositive 307(b) preference under the recepton criterion. WWKB provides significant service to areas and populations which are currently underserved.[26] [27] WWKB provides primary service at night to a total of 23,206 persons in a 253 square mile area receiving fewer than 5 other aural services. Of that total, 18,252 persons residing in a 177 square mile area receive only 4 other aural services, and 4,954 persons residing in a 76 square mile area receive only 3 other aural services. By contrast, the proposed WTHE critical hours gain area contains no area or population which receives fewer than 5 other aural services during critical hours and, indeed, is fully served by at least 23 other aural services and partially served by at least 4 additional aural services during critical hours.

75. WWKB's provision of service to over 23,000 persons residing in underserved areas is more than sufficient to entitle Empire State to a dispositive Section 307(b) preference over Bursam's proposal to provide no new service to underserved areas. *E.g., WNON, Inc.*, 37 FCC 961, 963-965 (1964), *recon. denied*, 38 FCC 471 (1965) (proposed service to 5,345 persons receiving between 2 and 4 other services would satisfy "truly significant need" and is dispositive of Section 307(b) issue despite proposal of competing applicant to serve a total population 7 times greater residing in well-served areas); *Sawnee Broadcasting Co.*, 8 FCC 2d 503, 507 (Rev. Bd. 1967) (proposal to provide service to 18,170 persons receiving 3 or 4 other services dispositive where competing applicant proposed no new service to underserved areas); *see also Notice of Proposed Rule Making in Docket No. 15084*, 25 RR 1615, 1626 (1963) (*AM Assignment Standards)* (provision of service to underserved areas in a major priority in AM allocation matters).

76. Empire State also is entitled to a dispositive preference under the efficient distribtion criterion. *See Kent-Ravenna Broadcasting Co.*, 22 RR 2d 605, 611 (1961). The operation of WWKB as a Class I-B, clear channel station at Buffalo on 1520 kHz utilizing 50 kilowatts of power, day and night, is fully consistent with the Commission's AM allocation scheme. As a Class I dominant station, WWKB operates on a clear channel where it renders primary and secondard service over an extended area and at relatively long distances. This operation and service is in complete conformance with the allocation scheme set forth in the Commission's rules. Bursam, on the other hand uses 1520 kHz as a Class II, daytime only station. Bursam operates as a secondary station on a clear channel to render service to a limited primary service area. The grant of Bursam's application would impede the AM allocation scheme envisioned in the Commission's rules by causing a dominant clear channel station to cease operation in favor of a secondary daytime only station. *See Hubbard Broadcasting v. FCC*, 663 F.2d 220 (D.C. Cir. 1980).

77. A comparison of WWKB's extensive existing service -- which would be destroyed if Bursam's application were to be granted -- with the comparatively insignificant proposed increase in WTHE's service illustrates the inherent inefficiency of spectrum utilization which would result from the Bursam proposal:

Existing WWKB Service Which Would Be Destroyed	**Proposed WTHE Service To Be Gained**
1. Loss of primary service during *all daytime hours* to *1,487,437 persons in a* 5,370 square mile area;	1. Gain of primary (2.0 mV/m service to *617,717 persons* in a 225.3 square kilometer area *during only the four critical hours* of each day.
2. Loss of interference free intermittent service during *all daytime hours* to *an* additional *449, 657 persons* in a 7,393 square mile area;	
3. Loss of primary service during *all nighttime hours* to *1,487,437 persons* in a 5,370 square mile area; and	
4. Loss of skywave service during *all nighttime hours* to *55,652,493 persons* in a 214,121 square mile area.	

Empire State Ex. 4, Table 4; Bursam Ex. 2 at 12 & Table VI. Any such trade-off would amount to the antithesis of efficient distribution of radio facilities.

78. Because WTHE is an existing station which currently provides -- and will continue to provide if Empire State's application is granted and Bursam's application is denied -- primary service to its entire city of license, Mineola, New York, during all daytime hours, including all critical hours, Bursam cannot claim any preference under the transmission service criterion of Section 307(b) analysis. *E.g., Sawnee Broadcasting Co.*, 8 FCC 2d at 506; *WNON, Inc.*, 37 FCC at 964; *see* C.F.R. § 73.37, note 6. Empire State, on the other hand, is entitled to a significant preference under the transmission service criterion, because the grant of its application will continue an existing transmission service in Buffalo and will result in no loss of any existing transmission service, whereas the grant of Bursam's application would terminate WWKB's service and thus result in the loss of transmission service in Buffalo. *See Archilla - Marcocci Spanish Radio Co.*, 101 FCC 2d at 520-530 (proposal which permits more than one transmission service preferred over proposal permitting only one such service).

79. Finally, Empire State's operation as a clear channel station on 1520 kHz at Buffalo, New York, is recognized under international agreements to which the United States is a party. If WWKB's license were not renewed, the United States would be prejudiced in its ability to maintain its rights under international agreements. *Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1046 (D.C. Cir. 1977).

80. Empire State is thus entitled to dispositive preferences under the Section 307(b) issue for (1) its superior reception service to underserved area; (2) its overwhelming superiority under the efficient distribution of radio service criterion; (3) its superiority under the transmission service criterion; (4) its proposal to continue a service which has been in existence for over 60 years; and (5) its proposal to preserve the United States' reserved right to use of 1520 kHz in Buffalo as a 50 kilowatt clear channel station under international frequency allocation agreements. These numerous preferences favoring a grant of Empire State's application are not offset by any Section 307(b) factor favoring the application of Bursam.

81. It is well settled that,

> When considering the multiple and complex questions involved with regard to mutually exclusive applications, whether for the same or different communities, only in those situations in which, after balancing all of those factors necessary in any particular case, neither proposal can be awarded a significant preference under Section 307(b), will the Commission look to the standard comparative issue to make a choice between the proposals.

Kent-Ravenna Broadcasting Co., 22 RR at 612; *see also FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358 (1955). In this case, Empire State is entitled to numerous decisive Section 307(b) preferences, while Bursam is entitled to none. Individually, and collectively, therefore, Empire State's reception service, efficiency, transmission service and other preferences entitle it to summary decision in its favor, as a matter of law, on the Section 307(b) issue.

82. Having concluded that Empire State is entitled to summary decison on the Section 307(b) issue, it follows that the remaining issues are moot. As noted by the Review Board, Bursam could gain nothing by trial of the "renewal expectancy" issue (issue 1). Only Empire State could benefit if it met its burden on that issue. *Empire State Broadcasting Corporation*, 2 FCC Rcd. 7554, 7556 (1987). Further, the comparative issue (issue 3) is contingent on the 307(b) issue as specified in the *Hearing Designation Order* and as a matter of law. *Allentown, supra.*

Accordingly, IT IS ORDERED, That the "Motion For Summary Decision" filed December 5, 1988 by Bursam Communications Corp. IS DENIED.

IT IS FURTHER ORDERED, That the Renewed Motion For Summary Decision filed December 5, 1988 by Empire State Broadcasting Corporation IS GRANTED and the renewal of the WWKB license IS GRANTED.

IT IS FURTHER ORDERED, That the application of Bursam Communications Corp. IS DENIED; the application of Empire State Broadcasting Corporation (WWKB) IS GRANTED; and this proceeding IS TERMINATED.[28]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTES

[1] Capital Cities Communications, Inc. was formerly the licensee of WWKB.

[2] WWKB was formerly designated as WKBW.

[3] Critical hours are the two hours immediately preceding local sunset and the two hours immediately following local sunrise. 47 C.F.R. §§ 73.14 & 73.187.

[4] The initial *HDO* (DA 87-454, released May 1, 1987), unlike the modified HDO, made the comparative issue, including consideration of entitlement to a renewal expectancy, contingent on resolution of the Section 307(b) issue.

[5] The Bureau's reference to Bursam's extra-rule standards and methods for calculating interference refers to Bursam's reliance on the "distortion zone" concept in its waiver request.

[6] Tr. 158-160. This ruling was later incorporated by reference in *Order*, FCC 87M-3008 (released November 20, 1987).

[7] *See Order*, FCC 88M-100 (released January 15, 1988).

[8] Also under consideration are the Reply pleadings filed January 17, 1989 by the Mass Media Bureau, Empire State and Bursam.

[9] Less towns over 2,500 with less than 2 mV/m.

[10] The terrain information for the following FM facilities could not be located at the FCC. Terrain information from the National Geophysical Data Center Thirty Second Point Topography Data Base (TPG-0050) was used for these facilities:

WJQZ, Wellsville, New York, Channel 228A

WRLT, Buffalo, New York, Channel 245B

WKKK, Rochester, New York, Channel 280A

[11] Section 73.187 establishes critical hours protection for clear channel stations in terms of "maximum permissible radiation"; it does not provide a "method" for "calculating interference". Bursam's showing of interference from WHTE (at 1 kw) to WWKB in Exhibit 2 was allegedly "based" on Section 73.187 (Bursam Ex. 2; Tr. 507), but Bursam's method of computation was never made entirely clear on the record (see Tr. 522-533).

[12] Mr. Beverage testified that the WTHE interference zone was based on Section 73.187 which used the diurnal curve for SS-2 (Tr. 518-519; 535; 573), but that Table II of Bursam Ex. 2A used SS-1.5 for the "distortion zone" (Tr. 599) and Table III also used a time other than SS-2 (Tr. 600). Empire State's Exhibit 9 indicates the Bursam Exhibit 2A, Table III showing computes the "distortion zone" as of SS-1. Empire State Ex. 9 at 7.

[13] 47 C.F.R. § 73.14 defines the "intermittent service area" (the area receiving service from the groundwave of a broadcast station but beyond the primary service area) as being "subject to some interference and fading." Thus, Anderson was defining conditions ("interference" and "fading") which the Commission's rules already take into account for intermittent service and not-withstanding which the 0.1 mV/m contour is protected pursuant to 47 C.F.R. § 73.187.

[14] Compare Bursam Ex. 19, which used, without explanation, a *different* reduction factor of a 2.5 dB adjustment (Bursam Ex. 19 at 3).

[15] As noted, *no* "distortion" is shown in the area between the *0. 5 mV/m* contours of WWKB, although there is considerable WTHE interference in and even beyond those areas (Bursam Ex. 2A, Figs. 1 and 3).

[16] As earlier noted (see footnote 14, supr a), Bursam never explained why a 2.5 dB adjustment was used in its Ex. 19 whereas a 3 dB adjustment was used in its Ex. 2C.

[17] Fig. 32 shows area and population for 100% of the WWKB 0.1 mV/m contour at SS-2 as unaffected by any "distortion."

[18] This assumption is without record support and is at variance from the Commission's requirement that the carrier be held within +/- 20 Hertz. *See* Empire State Ex. 10, p. 1.

[19] The sunrise and sunset times referenced by this report are the sunrise and sunset times designated by the FCC on the WTHE license except for two errors on the license. The June 15th sunrise at Mineola, New York is calculated at 4:22 AM. Using the Commission's 15 minute policy, the license should read 4:15 AM. Similarly, sunset for December 15th calculates at 4:28 PM, so the license should read 4:30 PM instead of 4:45 PM.

[20] Reproduced as Appendix B to Empire State Exhibit 6; see also Bursam Exhibit 17, page 2.

[21] For the purpose of the Empire State study, the vertical angles specified in the FCC rules for nighttime operation have been used when determining skywave propagation. The pertinent angles for 10% and 50% skywave propagation were determined using Section 73.190, Figure 6A. The objectionable interference caused by WTHE would be greater had this study incorporated vertical angles down to 0 degrees as required by 73.187 of the FCC Rules.

[22] *Notice of Inquiry*, 52 Fed. Reg. 31795.

[23] When the 50% skywave field was employed in calculating the distortion zone, Bursam Exhibit 19 projected extra-distortion zone interference to populations ranging between 128,579 persons at sunset minus 2 hours and 444,699 persons at sunrise (Bursam Exs. 19 & 21, Table 16).

[24] Bursam cites *Effingham Broadcasting Co.*, 7 RR 2d 484 (Rev. Bd. 1966) as support for the use of the "balancing" approach. However, that case did not involve a rule waiver issue. In addition, although decided in 1966 it involved an application filed prior to the effective date of the go-no-go rules and thus was governed by the old pre-rule "balancing" standards. 7 RR 2d at 487-488. Bursam also cites *KTVO, Inc.*, 96 FCC 2d 472 (Rev. Bd. 1983); *Triangle Publications, Inc.*, 37 FCC 2d 307 (1964); *WSET, Inc.*, 80 FCC 2d 233 (1980); and *Sawnee Broadcasting Co.*, 8 FCC 2d 503 (Rev. Bd. 1967). Bursam *PF&C* at ¶¶ 139-140. Those cases also did *not* involve requests for waiver of Commission rules, but rather merely concerned requests for relocation of transmitter facilities or competing applications for improved facilities which were not in conflict with any Commission rule. They are thus completely inaaposite here.

[25] *E.g., John Lamar Hill*, 70 FCC 2d 153, 158-159 (Rev. Bd. 1978), *remanded on other grounds*, FCC 79-88 (rel. February 8, 1979), *on remand*, 46 RR 2d 148 (Rev. Bd. 1980), *aff'd*, FCC 81-339 (rel. July 16, 1981); *Goodson-Todman Broadcasting, Inc.*, 45 FCC 2d 573, 581 (1973), *recon. denied*, 46 FCC 2d 533 *and* 49 FCC 2d 242 (1974), *remanded*, 35 RR 2d 47 (D.C. Cir. 1975),

reaff'd 35 RR 2d 1219 (FCC 1975), *remanded sub nom., Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1406 (D.C. Cir. 1977), *on remand*, 68 FCC 2d 46 (1978).

[26] The Commission considers as underserved those areas which receive fewer than five other services. *E.g., Valley Broadcasters, Inc.*, 104 FCC 2d 1549, 1561-1562 (Rev. Bd. (1986); *Archilla-Marcocci Spanish Radio Co.*, 101 FCC 2d 522, 527 (Rev. Bd. 1985), *recon. denied*, FCC 86-271 (rel. May 30, 1986).

[27] Empire State's showing that some areas within nighttime 0.5 mV/m contour receive as few as four or three other aural services is based on use of the 1.0 mV/m contour for FM stations (Empire State Ex. 4, p. 2). Bursam's conclusion that there are no such underserved areas at night within the WWKB 0.5 mV/m contour is based on use of the 0.7 mV/m and 0.5 mV/m contours for Class B1 and Class B FM stations, respectively (Bursam Ex. 2, p. 8; Tr. 1485). Bursam's use of such contours is rejected. Although the Commission did conclude, in the *Report and Order* in BC Docket No. 80-90, FCC 2d 152, 183 (1983), *recon. granted on other grounds*, 97 FCC 2d 279 (1984), that the protection standard for allocation purposes for Class B1 and Class B stations should be 0.7 mV/m and 0.5 mV/m, it has since raised the question "whether circumstances are sufficiently different at this time to warrant specification of a uniform protected contour of 1 mV/m for all classes of [FM] stations, including Classes B and B1." *Notice of Proposed Rulemaking* in MM Docket No. 87-121 (Short-Spaced FM Station Assignments by Using Directional Antennas), FCC 88-73 (rel. March 30, 1988). In analyzing the availability of other aural services, the issue is coverage, not protection, and the Commission has historically and currently used the 1 mV/m contour for all FM stations in adjudicatory cases involving comparative coverage and the availability of other aural services. *See, e.g., Las Americas Communications, Inc.*, 101 FCC 2d 736 (1984), in which the designated coverage issue referred specifically to the "1 mV/m or greater [primary aural service] in the case of FM." The Hearing Designation Order in *Las Americas* was adopted on February 24, 1984, *after* the release of the *Report and Order* in MM Docket No. 80-90. *See* also *Hearing Designation Order* (Erath, La., 3 FCC Rcd. 6298 at paragraph 7 (1988)).

[28] In the event exception are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

SUMMIT MOBILE RADIO COMPANY — File No. 25849-CD-P/L-01-87

For authority to construct and operate new facilities in the Public Land Mobile Service on frequency 152.78 MHz at Derry, Keene, Laconia, Goffstown, and Exeter, New Hampshire

For authority to construct and operate new facilities in the Public Land Mobile Service on frequency 152.78 MHz at Dover and Portsmouth, New Hampshire and Sanford, Maine — File No. 20334-CD-P/ML-01-88

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 1989 Released: September 26, 1989

By the Chief, Mobile Services Division:

1. The New England Telephone and Telegraph Company (NET) has filed a petition to deny the above captioned applications of Summit Mobile Radio Company (Summit). Summit requests authority to construct two-way facilities to operate on frequency 152.78 MHz at Derry, Keene, Laconia, Goffstown, and Exeter, New Hampshire (New Hampshire application), and at Dover and Portsmouth, New Hampshire and Sanford, Maine (Maine application).[1] Responsive pleadings have been filed.

I. BACKGROUND AND CONTENTIONS

2. NET operates Station KCA671 on frequency 152.78 MHz in the same general area proposed to be served by Summit. NET argues that the Derry and Goffstown facilities proposed in Summit's New Hampshire application, and the Portsmouth facility proposed in Summit's Maine application will cause electrical interference to NET's Station KCA671.

3. Specifically, NET argues that although Summit's proposed system utilizes highly directional antenna patterns to provide the required interference protection, Summit's interference analysis, based on derived data and antenna gain estimates, is still insufficient to demonstrate interference-free operation to Station KCA671. NET states that in its experience, such antenna patterns are unstable and highly susceptible to change from even a slight position variation in the mounting of the antenna, and that the exact antenna power gain ratios are rarely achieved in the field. NET further argues that Summit's proposed system will create excessive amounts of interference to NET's existing system due to simultaneous keying,[2] that Summit's interference analysis contains no analysis of the specific terrain conditions between its proposed stations and NET's stations, and that field testing is needed to measure the full scope of interference to NET's existing system. NET also argues that Summit's interference analysis did not take into account the fact that NET has operated an extended mobile telephone service in this area for more than twenty years and that Summit's proposed system will interfere with NET's extended service area.

4. In opposition, Summit states that its co-channel interference studies demonstrate that no harmful interference will result to NET's Station KCA671, even when the terrain data contained in NET's own applications is used. Summit further states that contrary to NET's assertion of an extended service area for NET's Station KCA671, NET is not entitled to protection beyond its 37 dBu contour.

5. In addition, Summit states there is no reason to believe that the antennas will not be mounted as proposed. Moreover, Summit contends that NET's claim that interference will be caused to NET's system by simultaneous keying is unsubstantiated, and, in any event, is a request for protection against a theoretical type of interference which the Commission has neither defined nor proscribed.

II. DISCUSSION

6. Based on our review of Summit's proposals, we conclude that Summit's proposals will not cause harmful electrical interference to NET's protected 37 dBu service contours. First, we have examined the interference studies submitted with Summit's applications, and have determined that the studies were conducted in accordance with Section 22.504 of the Rules and the Carey Report.[3] Both these studies, and our own interference analysis, confirm that Summit's proposed Derry and Goffstown, New Hampshire facilities and the proposed Portsmouth, Maine facility will not cause electrical interference to NET's existing system. Second, we find no merit in NET's argument that the antennas proposed in Summit's application will not provide interference-free operation.[4] Third, NET has not demonstrated the existence of any unusual terrain characteristics in the area of the proposed facilities to justify its conclusion that specific terrain conditions, and not the Carey Report, must be utilized in calculating electrical interference. Summit's studies, based on estimated data from the National Telecommunications and Information Administration (NTIA) data base, is fully consistent with Section 22.115 of the Rules which allows applicants to use computerized data bases in determining heights above average terrain. Moreover, we have compared the height values submitted by Summit in its applications for the height above average terrain along the inter-station radials to the values obtained using the Commission's computerized terrain data base, and have not found any significant differences.

7. NET's argument's concerning protection for its Station KCA671 in an extended service area and from simultaneous keying were considered and rejected in *Ram Communications of Massachusetts, Inc.* (*Ram Communications*), 3 FCC Rcd 3545 (Mob. Serv. Div. 1988). In *Ram Communications*, NET challenged Ram Communications

of Massachusetts, Inc.'s request for authority to construct two-way facilities at Portland, Falmouth, Saco, Lyman, and Sanford, Maine, and at Portsmouth, Stratham and Rochester, New Hampshire. There, regarding NET's argument that simultaneous keying will cause electrical interference to NET's existing system, we stated that "the Commission has never approved a method for calculating interference from multiple transmitters for the public mobile services and does not consider the effects of simultaneous keying (footnote omitted)." *Ram Communications*, 3 FCC Rcd at 3546. In addition we found that NET had not submitted any measurements to establish that it was entitled to protection beyond the 37 dBu contour for Station KCA671. *Id.* Similarly, in this case, NET has not submitted any evidence to substantiate this claim. Accordingly, we find that NET's argument that it is entitled to protection for an extended service area is without merit.

8. In light of our determination that Summit's proposed facilities do not cause harmful electrical interference to NET's 37 dBu contour, we find that NET has failed to demonstrate any basis to deny Summit's applications. We further find that Summit is qualified to be a Commission licensee, and that grant of Summit's applications to be in the public interest.

III. ORDERING PARAGRAPHS

9. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commissions Rules that the application of Summit Mobile Radio Company, File No. 25849-CD-P/L-01-87 IS GRANTED.

10. IT IS FURTHER ORDERED, pursuant to Section 0.291 of the Commissions Rules that the application of Summit Mobile Radio Company, File No. 20334-CD-P/ML-01-88 IS GRANTED.

11. IT IS FURTHER ORDERED, that the Motions to Accept Late Pleadings filed by New England Telephone and Telegraph on October 26, 1987 and February 24, 1988, ARE DENIED.

12. IT IT FURTHER ORDERED that the Petition to Deny the Derry, Keene, Laconia, Goffstown, and Exeter, New Hampshire application filed by New England Telephone and Telegraph IS DENIED.

13. IT IT FURTHER ORDERED that the Petition to Deny the Dover and Portsmouth, New Hampshire and Sanford, Maine application filed by New England Telephone and Telegraph IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Summit filed its New Hampshire application on August 25, 1987, and the application appeared on *Public Notice*, Report No. PMS-87-50 (released September 9, 1987), as acceptable for filing. Summit filed its Maine application on October 20, 1987, and the application appeared on *Public Notice*, Report No. PMS-88-05 (released November 4, 1987), as acceptable for filing. NET filed its petitions to deny the New Hampshire and the Maine applications on October 26, 1987 and February 24, 1988 respectively. NET simultaneously filed Motions to Accept Late Pleadings for its petitions to deny. NET stated that it took steps to obtain copies of Summit's applications shortly after they appeared on Public Notice, but that NET did not receive a copy of the New Hampshire application until October 1, 1987, and did not receive a copy of the Maine application until December 7, 1987. Summit has filed Oppositions to both NET's Motions. We find that NET has not justified its request that we accept its untimely petitions, and deny NET's Motions to Accept Late Pleadings. Moreover, we have examined the substance of NET's peititions, and find that they are without merit. *See infra* at paras. 6-8.

[2] Simultaneous keying is the transmission of voice or data communications over two or more co-channel transmitters at the same time, and on the same frequency.

[3] Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service", Carey, Roger B. (released June 24, 1964).

[4] On May 10, 1988, Summit amended its New Hampshire application to modify its proposed antenna system for the Derry and Goffstown facilities to address NET's concerns that Summit would not be able to achieve the antenna gains specified in the application. The proposed facilities now incorporate the use of a DB-225-2 antenna. NET has not raised any objection to the new antenna systems, and in any event, we have determined that no harmful interference will be caused to NET's Station KCA671 from Summit's proposed Derry and Goffstown facilities. In addition, we have no basis to conclude that the antennas will not be mounted as Summit has specified. For Summit to mount the antennas in such a way as to change their patterns would be a violation of its authorizations. If, after Summit's facilities are constructed, NET determines that the antennas are incorrectly mounted, it may bring the matter to the Commission's attention for further action.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of

Petitions to Reconsider the Grant of SMR Trunked License WNMJ-686 at Bowman, North Dakota, to Consolidated Communications Corporation	File No. LJB-14
and	
Petitions to Reconsider the Grant of SMR Trunked License WNMY-406 at Hettinger, North Dakota, to Consolidated Communications Corporation	File No. 625070
and	
Application for a new SMR Trunked Station License at Dickinson, North Dakota, by Consolidated Communications Corporation	File No. 620532

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 1989 Released: September 26, 1989

By the Chief, Private Radio Bureau:

I. BACKGROUND

1. On September 27, 1988, Consolidated Communications Corporation (CCC) was granted a license for SMR trunked station WNMJ-686 at Bowman, North Dakota. On October 26, 1988, Motorola, Inc., filed a petition to reconsider grant of this license. On October 27, 1988, The American SMR Network Association, Inc. (ASNA), also filed a petition to reconsider grant of this license. Both petitions contend that CCC is not eligible to be a licensee in the Private Land Mobile Radio Services under Section 90.603(c) of the Commission's Rules, 47 C.F.R. § 90.603(c), because it is a wireline telephone common carrier.

2. On November 9, 1988, CCC was granted a license for SMR trunked station WNMY-406 at Hettinger, North Dakota. On December 9, 1988, both Motorola and the National Association of Business and Educational Radio, Inc. (NABER), filed petitions to reconsider grant of this license on the basis that CCC is not eligible to be a Part 90 licensee. On December 9, 1988, grant of station license WNMY-406 was set aside and the application for that license was returned to pending status (File No. 625070).

3. On July 3, 1988, CCC filed an application for an SMR trunked station at Dickinson, North Dakota (File No. 620532). On December 16, 1988, CCC filed a request for waiver of Section 90.603(c) of the Rules with respect to this application if the Commission should find that it is ineligible to hold a Part 90 license. CCC's application was returned on February 10, 1989, for correction. It was resubmitted on February 23, 1989. We have, *sua sponte*, included this application in our consideration of this matter because of the questions raised herein concerning CCC's eligibility.

4. On January 10, 1989, pursuant to Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), CCC was asked to respond to the petitions for reconsideration filed by Motorola, ASNA and NABER. On February 9, 1989, CCC filed its opposition to these petitions. Motorola, ASNA and NABER all filed replies to CCC's opposition. Additionally, Motorola sought to file a supplemental pleading that CCC opposed.[1]

II. PLEADINGS

5. Petitioners Motorola, ASNA and NABER allege that CCC is so closely linked with Consolidated Telephone Cooperative (Consolidated Telephone), a public telephone cooperative incorporated in the State of North Dakota, that it is a *de facto* wireline common carrier. In support of this allegation petitioners state that both companies intend to serve the same areas. They state that the officers and directors of Consolidated Telephone and CCC are identical. They state that the manager of Consolidated Telephone is the registered agent for both Consolidated Telephone and CCC. They note that Consolidated Telephone and CCC have the same business address.[2]

6. Additionally, Motorola cites to the Articles of Incorporation of CCC. Listed among its purposes is the following:

> To engage in the general telecommunications marketing business; and to buy or otherwise obtain, and to sell, deal in, lease, maintain, install, repair, distribute, or otherwise handle products, devices, fixtures, apparatus, and equipment of all kinds, including but not limited to telephones (and) telephone interconnect.[3]

7. Petitioners conclude from this that CCC is intended to complement the wireline common carrier business of Consolidated Telephone. They contend that Section 90.603(c) of the Rules prohibits eligibility of entities such as CCC where, as here, they are subsidiary or companion companies of a wireline common carrier and interlocking corporate directors is clearly demonstrated.[4]

8. In its opposition to the petitions for reconsideration CCC argues, essentially, that petitioners are collaterally estopped from filing petitions for reconsideration of the application grants at issue. CCC contends that because petitions to deny do not lie against SMR applications under the provisions of Section 1.962 of the Rules, 47 C.F.R. § 1.962, petitioners may not avail themselves of the provisions of Section 1.106 of the Rules, 47 C.F.R. § 1.106. CCC argues that such petitions constitute *de facto* filing of *post facto* petitions to deny, and frustrate the intent of Section 1.962.[5]

9. CCC admits to being a wholly owned subsidiary of Consolidated Telephone. It states, however, that CCC and Consolidated Telephone are separate legal entities engaged in separate and distinct business activities. CCC indicates that Consolidated Telephone is nonprofit but CCC is for profit. CCC avers that Consolidated Telephone furnishes telephone service to its member-owners, while, on the other hand, CCC is not authorized to furnish telephone service and is instead in the general telecommunications marketing business. CCC also states that although both CCC and Consolidated Telephone have the same members on their Boards of Directors, the boards are separate and distinct. CCC also indicates that CCC and Consolidated Telephone hold separate meetings and elections, maintain separate minute books, and have no commonality of officers.[6]

10. CCC also states that it hires its own accountants and files separate tax returns, maintains its own financial accounts and banks at a different bank than Consolidated Telephone, has separate inventory and equipment, has five full-time employees (none of whom is employed by Consolidated Telephone), has a separate telephone number and post office box, and has its own logo and letterhead.[7]

11. On the basis of these facts, CCC states that it is its own and separate legal entity. As a matter of law, it contends that it is not an organization prohibited from holding an SMR license under Section 90.603(c). It notes that in 1986 the Commission initiated a proposal to eliminate this rule (PR Docket No. 86-3), and that this proposal is still pending.[8]

12. In its opposition to the petitions for reconsideration CCC refers to the adoption of Section 90.603(c) in the Second Report and Order in Docket 18262, 46 FCC 2d 752 (1974). It contends that contrary to the representations of petitioners, there was no clearly articulated Commission intent or purpose in the enactment of Section 90.603(c), and that any such intent or purpose is properly only the subject of conjecture.[9]

13. Petitioners argue that Section 90.603(c) was enacted to prevent possible favoritism of a local wireline common carrier toward its affiliated Private Radio licensee seeking interconnection with the public switched telephone network (PSTN), and to prevent possible anticompetitive advantage of either the common carrier or the affiliated Private Radio licensee located in the same market.[10] CCC responds that to the extent such a concern is valid it is not applicable in this case. CCC alleges that its existing SMR system and the locations specified in its two applications for SMR systems are not in any areas served by Consolidated Telephone. Instead, US West Communications provides local exchange service for each of the three areas at issue. In this respect, it alleges it should not be treated differently from any other communications carrier in the area that must obtain interconnection from US West Communications.[11]

14. In their replies, Motorola and NABER state that while the actual location of each SMR repeater site may be where US West provides access to the PSTN, the service areas of the SMRs in Bowman and Dickinson would include locations where Consolidated Telephone provides access to the PSTN. Both Motorola and NABER point to Manning, Richardton, and Taylor, North Dakota, as examples where this situation would exist for an SMR in Dickinson, North Dakota. Motorola also cites Rhame and Scranton as examples of similar locations with respect to an SMR located at Bowman, North Dakota.[12]

15. Should we hold that CCC is not eligible to be an SMR licensee, CCC has, in the alternative, requested waiver of Section 90.603(c) of the Rules. The basis for its waiver request with respect to its licensed system and its two pending applications is that grant of such a waiver would not undermine the fundamental purpose of the rule. The reasoning CCC advances in support of this contention, however, is that the fundamental purpose of the rule has never been clearly articulated and the Commission has now proposed to abolish the rule.[13] Petitioners contend that the Commission has adopted a policy of not granting waivers during the pendency of rule making proceedings that may affect the relevant rule.[14]

III. DECISION

16. We must first address CCC's claim that petitioners are collaterally estopped from filing petitions for reconsideration of grant of CCC's licenses because they may not file petitions to deny against the underlying applications. That the Commission has not provided for public notice and opportunity to petition to deny certain Private Radio applications does not vitiate petitioners' other due process rights under the Communications Act and the Commission's Rules. Section 1.106(b)(1) provides specifically for the filing of a petition for reconsideration by any person whose interests are adversely affected by any action taken by the Commission or by the designated authority.[15] The instant petitions for reconsideration are, therefore, properly filed. CCC's request that the petitions be dismissed is denied.

17. CCC advances many arguments to support the concept that it is a *bona fide* entity, separate and apart from Consolidated Telephone. These arguments, by and large, beg the question. The issue at hand is not whether CCC is a separate corporation. The issue is whether we should pierce CCC's corporate veil and treat CCC and Consolidated Telephone as one for purposes of applying Section 90.603(c) of the Rules.

18. Generally, the fact that one corporation owns all of the stock of another corporation does not affect their status as separate entities.[16] An overall view of the arrangement, however, may demonstrate that a corporation holds stock of another not for the purpose of participating in the affairs of the other corporation but for the purpose of control. In such a case the subsidiary corporation is used as a mere instrumentality or department of the stockholding company. The subsidiary company would then be considered an agent or alter ego of the stockholding company. This alter ego or instrumentality theory is used to cast aside the corporate shield particularly in cases where the corporate form is used to obtain a privilege. This is especially true where corporate form results in evasion of a statute (or in this case a rule) or modification of its intent.[17]

19. For the doctrine of "piercing the corporate veil" to apply, two dominant requirements must be met: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and its stockholders (in this case, the parent corporation) no longer exist, and (2) circumstances must indicate that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.[18] Typically,

such instances include circumstances where creation of a corporation gives a stockholder greater rights than it would otherwise hold.[19]

20. CCC and its 100 percent stockholder, Consolidated Telephone, are both in the telecommunications industry. They both do business in North Dakota. The members of both their boards of directors are the same. Their business addresses are the same. They have the same registered agent. Most telling, however, is that Section 90.603 of the Rules prohibits Consolidated Telephone from holding an SMR license. CCC, a wholly owned subsidiary of Consolidated Telephone, may hold an SMR license unless we pierce the corporate veil.

21. Commission precedent supports looking through corporate form where necessary for purposes of regulation. The Commission has explicitly treated common carrier parents as one with their non-common-carrier affiliates to prohibit common carrier parents from creating non-common-carrier subsidiaries to gain otherwise unintended privileges under its rules.[20] In this case, too, a common carrier parent stands to gain otherwise unintended privileges under Commission rules by virtue of its 100 percent ownership of a non-common-carrier subsidiary.

22. We must decline to recognize separate corporate form when its recognition would extend the principle of incorporation beyond its legitimate purposes.[21] To do anything less in this instance would allow any wireline common carrier to circumvent Section 90.603(c) by creating a separate subsidiary to file an application. Therefore, we hold that CCC is prohibited from being an SMR licensee because of the provisions of Section 90.603(c) of the Rules.

23. In light of this finding, we must now address CCC's waiver request. Petitioners are incorrect when they assert that we have adopted a general policy of not granting waivers of rules that are the subject of rule making proceedings. Our statement in Note 41 in the *Notice of Proposed Rule Making* in PR Docket No. 87-213, 54 Fed.Reg. 1967, January 18, 1989, that we would not consider waiver requests of rules that are the subject of that proceeding was limited to that proceeding. No inference should be drawn to the contrary. It has no bearing on CCC's waiver request. Moreover, the fact that we have proposed to eliminate the rule, standing alone, is not a sufficient basis for grant of such a waiver.

24. Section 90.151(a) of the Commission's Rules, 47 C.F.R. § 90.151(a), requires that any request for waiver of the Part 90 Rules be supported by a showing that unique circumstances are involved. CCC has not made such a showing. CCC's only argument in support of its waiver request is that it would not undermine the intent of the rule.[22] Rather than addressing the larger intent of the rule, however, CCC contends that the intent of the rule cannot be ascertained.[23] This is not a sufficient basis upon which to grant a waiver request. *Hope Broadcasting Co.*, 56 FCC 2d 65, 67 (1975).

IV. CONCLUSION

25. Accordingly, IT IS ORDERED that the Petition for Leave to File Supplemental Pleading filed by Motorola IS GRANTED. IT IS FURTHER ORDERED that the Request to Strike Unauthorized Pleading filed by CCC IS DENIED.

26. For the reasons stated above, IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by Motorola, ASNA and NABER ARE GRANTED. IT IS FURTHER ORDERED that the grant of station license WNMJ-686 to Consolidated Communications Corporation at Bowman, North Dakota, IS RESCINDED. IT IS FURTHER ORDERED that the pending applications of Consolidated Communications Corporation for SMR trunked stations at Hettinger, North Dakota, and Dickinson, North Dakota, ARE DISMISSED WITH PREJUDICE.

27. IT IS FURTHER ORDERED that Consolidated Communications Corporation's request for waiver of Section 90.603(c) of the Commission's Rules IS DENIED.

28. These actions are taken pursuant to Sections 0.131, 0.331, 1.3 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.3 and 1.106.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] Acceptance of Motorola's Petition for Leave to File Supplemental Pleading will develop a full and complete record.

[2] Motorola Petition to Reconsider Grant of SMR License WNMJ-686 at 1-4; Motorola Petition to Reconsider Grant of SMR License WNMY-406 at 1-4; ASNA Petition for Reconsideration at 1-4; NABER Petition for Reconsideration at 2.

[3] Motorola Petitions at 3.

[4] Motorola Petitions at 5; ASNA Petition at 5; NABER Petition at 2.

[5] CCC Opposition at 1-2.

[6] CCC Opposition at 3-5.

[7] CCC Opposition at 5.

[8] CCC Opposition at 5-7.

[9] CCC Opposition at 7.

[10] Motorola Petitions at 3-4; ASNA Petition at 4-5.

[11] CCC Opposition at 9-10.

[12] Motorola Reply at 4-5; NABER Reply at 3-4 (note 2).

[13] Opposition to Petitions filed by CCC, February 9, 1989, at 11.

[14] *See* Notice of Proposed Rule Making, PR Docket No. 87-213, 54 Fed. Reg. 1967, January 18, 1989, at n. 41.

[15] *See* Reply to Opposition to Petitions for Reconsideration filed by ASNA, February 22, 1989, at 2.

[16] Quinn v. Butz, 510 F.2d 743 (D.C. Cir. 1975); Robertson v. Roy L. Morgan Production Co., 411 F.2d 1041 (10th Cir. 1969).

[17] Joseph A. Kaplan & Sons, Inc. v. Federal Trade Commission, 347 F.2d 785 (D.C. Cir. 1965).

[18] Horticultural Enterprises Corp. v. Allstate Ins. Co., 477 F.Supp. 161 (C.D. Cal. 1979).

[19] Linn & Lane Timber Co. v. United States, 236 U.S. 574 (1915).

[20] General Tel Co. of Southwest v. United States, 449 F.2d 846 (5th Cir. 1971); *see* Capital Tel. Co. v. FCC, 498 F.2d 734 (D.C. Cir. 1974).

[21] Kivo Industrial Supp. Co. v. National Distill. & Chem. Corp., 483 F.2d 1098, 1106 (5th Cir. 1973).

[22] CCC Opposition at 11-12.

[23] *See* paragraph 12, *infra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-605

In the Matter of

Amendment of Section 73.202(b), RM-6392
Table of Allotments,
FM Broadcast Stations.
(Brush, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 4 FCC Rcd 755 (1989), issued in response to a petition filed on behalf of Randall S. Jacobson, Receiver (petitioner), licensee of Station KKDD(FM), Channel 296A, Brush, Colorado, proposing the substitution of Channel 296C1 for Channel 296A and modification of his license to specify operation on the higher-powered channel. Petitioner filed comments in support of the proposal. No other comments were received.

2. As indicated in the *Notice*, Channel 296C1 can be allotted to Brush, Colorado, at the petitioner's existing site,[1] consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. In view of the above, we believe the public interest would be served by substituting Channel 296C1 for Channel 296A at Brush, Colorado, since it could provide a first expanded coverage FM service to the community. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the license of Randall S. Jacobson, Receiver, to specify operation on Channel 296C1 in lieu of Channel 296A, as requested.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Brush, Colorado	296C1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license issued to Randall S. Jacobson, Receiver, for Station KKDD(FM), IS MODIFIED effective **November 13, 1989,** to specify operation on Channel 296C1 in lieu of Channel 296A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates at the licensed site of Station KKDD(FM) are 40-15-39 and 103-38-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-409

In the Matter of

Amendment of Section 73.202(b), RM-6693
Table of Allotments,
FM Broadcast Stations.
(Linden, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Marengo County Broadcasting, Inc. (petitioner), licensee of Station WDAL(FM), Linden, Alabama, seeking the substitution of Channel 253C1 for Channel 253C2,[1] and modification of its license accordingly, to specify the higher power channel.

2. Channel 253C1 can be allotted to Linden at the petitioner's specified site[2] in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. We believe the proposal warrants consideration. Therefore, we shall propose to substitute Channel 253C1 for Channel 253C2 at Linden, Alabama. As requested, we also propose to modify the license of Station WDAL(FM) to specify operation on Channel 253C1. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 253C1 at Linden.

4. Accordingly, in order to provide Linden with expanded radio service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Linden, Alabama	253C2,275C2	253C1,275C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner and his consultant, as follows:

Marengo County Broadcasting, Inc. Attn: Billy G. Hogan, President Rt. 1, Box 183 Elkmont, AL 35620	and
Larry G. Fuss Contemporary Communications P.O. Box 4010 Opelika, AL 36803 (Consultant)	

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 253C2 was substituted for Channel 296A in MM Docket No. 87-451, and the license of Marengo County modified accordingly. *See* 3 FCC Rcd 6849 (1988).

[2] Coordinates at the petitioner's specified site for Channel 253C1 at Linden are 32-10-00 and 87-40-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-416

In the Matter of

Amendment of Section 73.202(b),	RM-6700
Table of Allotments,	RM-6858
FM Broadcast Stations.	
(Metropolis, Illinois, Camden and Henderson, Tennessee)	

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: September 13, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration two separately filed conflicting petitions for rule making. The first petition, filed by Samuel K. Stratemeyer ("Stratemeyer"), requests the substitution of Channel 252C2 for Channel 252A at Metropolis, Illinois, and the modification of his license for Station WRIK(FM) to specify operation on the higher powered channel. In order to accommodate the proposal, Stratemeyer also requests the substitution of Channel 240A for Channel 252A at Camden, Tennessee, currently licensed to Station WRJB(FM), and the substitution of Channel 239A for Channel 240A at Henderson, Tennessee, currently licensed to Station WFKX(FM), and modification of the license of each station to specify operation on the new class A channel. The second petition, filed by Valley Wide Broadcasting, Inc. ("Valley"), requests the substitution of Channel 252C3 for Channel 252A at Camden, Tennessee, and modification of its license for Station WRJB(FM) to specify operation on the higher powered channel. The allotment could provide a first wide coverage area channel to Metropolis, Illinois or Camden, Tennessee. Stratemeyer and Valley each state an intention to apply for the respective channel, if allotted.

2. Channel 252C2 can be allotted to Metropolis in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.6 kilometers (10.3 miles) southeast,[1] if the channel substitutions at Camden and Henderson are accomplished. Channel 240A can be allotted to Camden in compliance with the Commission's minimum distance separation requirements and can be used at Station WRJB(FM)'s present transmitter site.[2] Channel 239A can be allotted to Henderson, Tennessee, in compliance with the Commission's minimum distance separation requirements and can be used at Station WFKX(FM)'s present transmitter site.[3] Channel 252C3 can be allotted to Camden in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.2 kilometers (13.2 miles) southwest to avoid a short-spacing to a construction permit (BPH870302ND), at Tupelo, Mississippi, Channel 253C, and to Station WINJ, Pulaski, Tennessee, Channel 252A.[4]

3. We believe the public interest would be served by seeking further comments on these proposals. In order to make a determination as to which proposal would better serve the public interest, we are providing the proponents with an opportunity to demonstrate why its community should receive the higher class channel allotment. In this regard, the parties should be guided by the criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In particular, the parties should submit a gain area study showing the population and square miles of the increased area to be served. *See Benton, Arkansas*, 3 FCC Rcd 4840 (1988), for the methodology to be used in these studies.

4. We shall propose to modify either the license of Station WRIK(FM) to specify operation on Channel 252C2, or the license of Station WRJB(FM) to specify operation on Channel 252C3, as requested. In accordance with Section 1.420(g) of the Rules, we shall not accept other expressions of interest in use of the channel at Camden or Metropolis or require Stratemeyer or Valley to demonstrate the availability of an additional equivalent channel for use by other interested parties.

5. We are also issuing *Show Cause Orders* to Valley Wide Broadcasting, Inc., the licensee of Station WRJB(FM), Camden, Tennessee, and Wolfe Communications, Inc., the licensee of Station WFKX, Henderson, Tennessee, seeking comments as to why each license should not be modified to specify operation on Channel 240A and Channel 239A, respectively. Whenever an existing licensee is ordered to switch channels in order to accommodate a new allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the licensee for reasonable and prudent expenses incurred by the change of channels. Stratemeyer has indicated its willingness to reimburse the licensees of Station WRJB(FM) and Station WFKX(FM) for the reasonable and prudent costs of changing frequency to accommodate the upgrade at Station WRIK, Metropolis, Illinois.

6. Accordingly, we seek comments on the alternative proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
	OPTION I	
Metropolis, Illinois	252A	252C2
Camden, Tennessee	252A	240A
Henderson, Tennessee	240A	239A
	OPTION II	
Camden, Tennessee	252A	252C3

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Valley Wide Broadcasting, Inc., licensee of Station WRJB(FM), Camden, Tennessee, and Wolfe Communications, Inc., licensee of Station WFKX(FM), Henderson, Tennessee

SHALL SHOW CAUSE why each of their licenses should not be modified to specify operation on Channel 239A and Channel 240A, respectively.

8. Pursuant to Section 1.87 of the Commission's Rules, Valley Wide Broadcasting, Inc., and Wolfe Communications, Inc., may, not later than **November 20, 1989** file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Valley Wild Broadcasting and Wolfe Communications, to furnish additional information. If Valley Wide Broadcasting or Wolfe Communications, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Valley Wide Broadcasting and Wolfe Communications, will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Valley Wide Broadcasting, Inc. Radio Station WRJB(FM) P. O. Box 508 Camden, Tennessee 38320	Wolfe Communications, Inc. Radio Station WFKX(FM) P.O. Box 2763 Jackson, Tennessee 38302

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Kathryn R. Schmeltzer John Joseph McVeigh Fisher, Wayland, Cooper and leader 1255 23rd Street, N.W., Suite 800 Washington, D.C. 20037-1125 (Attorney for Samuel K. Stratemeyer)	Jerrold Miller Miller & Fields, P.C. P.O. Box 33003 Washington, D.C. 20033 (Attorney for Valley Wide Broadcasting, Inc.)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Metropolis are North Latitude 37-02-30 and West Longitude 88-36-00.

[2] The coordinates for Camden, Tennessee, are North Latitude 36-03-25 and West Longitude 88-06-10.

[3] The coordinates for Henderson, Tennessee, are North Latitude 35-29-52 and West Longitude 88-42-29.

[4] The coordinates for Camden, Tennessee, Channel 252C3, are North Latitude 35-56-00 and West Longitude 88-16-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-417

In the Matter of

Amendment of Section 73.202(b), RM-6865
Table of Allotments,
FM Broadcast Stations.
(Century, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ziffle Broadcasting Company, Inc. (petitioner), requesting the substitution of Channel 286C3 for Channel 286A at Century, Florida, and the modification of its license for Station WKGT(FM) to specify operation on the higher powered channel.

2. A staff engineering analysis has determined that Channel 286C3 can be allotted to Century, Florida, in compliance with the minimum distance separation requirements of the Commission's rules with a site restriction of 7.0 kilometers (4.4 miles) north,[1] with the exception of Stations WHOD(FM), Channel 285A, Jackson, Alabama, and WAAZ(FM), Channel 285A, Crestview, Florida. However, WHOD(FM) has been ordered to move to Channel 233A in MM Docket 88-124, 4 FCC Rcd 1185 (1989), and WAAZ(FM) has also been ordered to move to Channel 284C2 in MM Docket 86-455, 2 FCC Rcd 7263 (1987). The proposed substitution of Channel 286C3 at Century, Florida, will be conditioned on Station WHOD(FM) moving to Channel 233A and Station WAAZ(FM) moving to Channel 284C2.

3. As requested, we shall propose to modify the license for Station WKGT(FM) at Century, Florida, to specify operation on Channel 286C3. In accordance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 286C3 at Century will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

4. We believe the public interest would be served by proposing the substitution of Channel 286C3 for Channel 286A at Century, since it could provide that community with an expanded radio service. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Century, Florida	286A	286C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Bradford D. Carey
Walker, Bordelon, Hamlin, Theriot & Hardy
701 South Peters Street
New Orleans, Louisiana 70130
(Counsel for Ziffle Broadcasting Company, Inc.)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 31-02-03 and West Longitude 87-16-58.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-418

In the Matter of

Amendment of Section 73.202(b), RM-6879
Table of Allotments,
FM Broadcast Stations.
(Wrens, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. Val-Tel, Inc. (petitioner) licensee of Station WRDW(FM), Wrens, Georgia, has filed a petition for rule making requesting substitution of Channel 245C3 for Channel 244A at Wrens, Georgia, and modification of its license for Station WRDW(FM) to specify the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Channel 245C3 can be allotted to Wrens in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) east,[1] in order to avoid a short-spacing to Station WFOX, Channel 246C at Gainesville, Georgia.

3. As requested, we shall also propose to modify the license of Station WRDW(FM) to specify operation on Channel 245C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the higher powered channel at Wrens or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

4. In view of the fact that Wrens could receive its first wide coverage area FM service the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Wrens, Georgia	244A	245C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

M. Scott Johnson
Catherine M. Grofer
Gardner, Carton & Douglas
1001 Pennsylvania Avenue, N.W.
Suite 750-N
Washington, D.C. 20004

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 33-13-20 and West Longitude 82-17-50.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-501

In the Matter of

Amendment of Section 73.202(b), RM-6450
Table of Allotments,
FM Broadcast Stations.
(Clearwater, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 13, 1989 Released: September 27, 1989

By the Chief, Allocations Branch:

1. At the request of Gulf Coast Radio, Inc. (petitioner), licensee of Station WKRL(FM), Channel 250C1, Clearwater, Florida, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 6210 (1988), proposing the substitution of Channel 250C for Channel 250C1 at Clearwater, Florida, and modification of its license to specify operation on the higher powered channel. Petitioner filed supporting comments reaffirming its intention to upgrade its facilities. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 250C for Channel 250C1 at Clearwater, Florida, since it could allow Station WKRL(FM) to expand its service area. The channel substitution can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to accommodate petitioner's desired transmitter location.[1] In accordance with Section 1.420(g) of the Commission's Rules, we shall modify the license of Station WKRL(FM) to specify operation on Channel 250C.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Clearwater, Florida	250C

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKRL, Clearwater, Florida, IS MODIFIED, to specify operation on Channel 250C in lieu of Channel 250C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 28-02-34 and West Longitude 82-40-16.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-589

In the Matter of

Amendment of Section 73.202(b), RM-6108
Table of Allotments,
FM Broadcast Stations.
(Creswell, Oregon)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: September 13, 1989 Released: September 27, 1989

By the Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration ("Petition") of the *Report and Order* (" *Order* ") in this proceeding, 3 FCC Rcd 4608 (1988), filed by Keffco, Inc. ("Keffco"), licensee of Station KZAM-FM, Creswell, Oregon. Keffco is the successor-in-interest to Visionary Radio Euphonics of Oregon, Inc. ("Visionary"), whose request for a channel substitution at Station KZAM-FM was denied. Visionary had requested the substitution of Channel 237C2 (95.3 MHz) for Channel 237A, and the modification of its license to operate on the upgraded channel. Alexander Broadcasting Company ("Alexander"), licensee of Station KXL-FM, Portland, Oregon, filed an opposition to the Petition and Keffco filed a reply.

2. The *Order* declined to grant Visionary's requested upgrade to Channel 237C2, because of substantial doubt as to the availability of a site that would allow line-of-sight to the community and would provide a 70 dBu signal over all of Creswell. The *Order* noted that an obstruction of approximately 133 meters above Creswell lay in the path between the proposed transmitter site and Creswell. That obstruction, an isolated terrain feature called Creswell Butte, has the potential to cause significant shadowing of the western side of Creswell.

3. In its petition for reconsideration, Keffco argues that the Commission does not require a petitioner for an allotment rule making to show that a particular site is available and acceptable. Rather, Keffco asserts, the requirement is that a suitable area exists within which to locate a site that complies with the Commission's interstation spacing and coverage requirements, citing *Pinckneyville, Illinois* (" *Pinckneyville* "), 41 RR 2d 69, 71 (1977). Keffco claims that it has reasonable assurance of the availability of at least one site, located on Hansen Butte, within such an area meeting these requirements. In an engineering statement submitted with its Petition, Keffco included a letter from a TV station licensee which states that its site is available as an FM antenna site.[1] The engineering statement was submitted in support of Keffco's claim that a signal from that site of minimum field strength of 70 dBu would entirely encompass Creswell--despite the shadowing caused by Creswell Butte. Keffco claims that the spirit of Section 73.315, specifying that there should be line-of-sight to the principal city, is met by insuring that at least a 70 dBu signal would be provided over the entire principal community of Creswell. Keffco asserts that the intent of this provision in paragraph (b) of that Section, is set out in the preceding paragraph, Section 73.315(a), which states that "a minimum field strength of 70 dB above one uV/m (dBu), or 3.16 mV/m, will be provided over the entire principal community to be served."

4. Relying on an application of the Longley-Rice tropospheric radio propagation model (commonly referred to as Tech Note 101), and utilizing 30-second point elevation data to determine the antenna height above average terrain, and several other modeling assumptions,[2] Keffco's engineering statement predicts that a minimum field strength of 81.6 dBu would be provided over all of Creswell--despite the diffraction losses resulting from the presence of Creswell Butte. However, the engineering statement does not state or demonstrate with any specificity the manner in which this result was derived.

5. In opposition, Alexander sets forth three main reasons why Keffco's Petition should be denied. First, Alexander contends that the letter from the owner of the antenna site is inadequate: it states only his "willingness to enter into *negotiations* leading towards the *possibility* of a mutually agreeable lease" (emphasis in original). Second, Alexander insists that Keffo's proposed site "abrades against" Section 73.315(b), which states, in addition to the requirement for line-of-sight coverage over the principal community, that "in no event should there be a major obstruction in this path." Finally, Alexander attacks Keffco's study, pointing out that it "is not possible to evaluate the accuracy or reliability" of its Tech Note 101 study because it does not describe in adequate detail the assumptions made or the methodology employed, nor include sample calculations, without which the accuracy of the predicted field strengths cannot be verified. In this respect, Alexander argues that the 30-second topographic data utilized by Keffco are too coarse for the modeling of "relatively small-scale, isolated terrain features" like Creswell Butte, and that such data, instead of finer data from a 7.5 minute map, yield erroneous results. However, Alexander also attacks the substance of Keffco's study, based upon its deductions as to how the study was performed and upon Keffco's own statements. Alexander asserts that Keffco substantially overestimates the signal field strength reaching Creswell Butte and Creswell by incorrectly assuming that the diffraction losses over Creswell Butte, which Keffco allegedly also overestimates, may be merely subtracted from the calculated "free-space" field strength values in the shadowed portion of Creswell. The assumption of free-space propagation, rather than propagation in accordance with the Commission's F(50,50) curves, and Keffco's erroneous modeling of the rounded Creswell Butte as an ideal knife-edge obstruction, argues Alexander, combines to overestimate the received signal strength on the order of 20 dB. [3] Therefore, Alexander submits that Keffco's station, based on free-space propagation and knife-edge diffraction losses, will, in all likelihood, not provide the required 70 dBu coverage of all of Creswell. Alexander also notes that Keffco did not conduct tests to measure the field strengths available in Creswell.

6. In reply, Keffco asserts that, as successor-in-interest, it cannot be held responsible for Visionary's failure to fully plead its case regarding site availability. Keffco reiterates that a petitioner is generally required to demonstrate only that a suitable area exists in which a site could be located, citing *Pinckneyville, supra* at 70. Thus, Keffco concludes, it should not be faulted for not having made a site availability showing in the petition for rule making or in its comments to the rule making notice, in which a specific request must be made for such showing. Keffco further asserts that the site owner's letter is adequate to demonstrate a reasonable assurance of site availability because this is an allotment proceeding, and not a comparative hearing where the details of proposals for actual construction are dealt with, including the availability of a particular site. In conclusion, Keffco insists that it has demonstrated the availability of a site for its proposed allotment that would comply with our rules. As to the sufficiency of its engineering statement to demonstrate that a city-grade signal would be provided over Creswell, Keffco insists that its use of Tech Note 101 yielded correct results. In another engineering statement submitted with its reply, Keffco claims that use of terrain data from a 7.5 minute map rather than from 30-second data used originally still yields a field strength of greater than 70 dBu, albeit reduced from 81.6 to 76.4 dBu. Finally, Keffco attempts to rebut Alexander's claim that Keffco's predicted field strengths are not median values (that take into account time and location variability) by stating that its analysis is equivalent, in that it considers the attenuation of received radio signals in accordance with a normal (or Gaussian) statistical distribution.

DISCUSSION

7. After a careful review of Keffco's petition for reconsideration, it will be denied. The *Order*'s ultimate finding was correct. No site is available that would permit the operation of a station in compliance with our rules. This determination flows from our conclusion that Keffco's engineering statement 1) substantially overestimates the signal received in Creswell, and 2) does not demonstrate that a station located at Keffco's chosen site could overcome the shadowing caused by Creswell Butte and still provide a signal field strength of at least 70 dBu over the entire community of Creswell.

8. In order to make an allotment, a suitable area must exist in which to locate a site. Such suitability is determined generally by whether a site might be located that complies with all of our engineering requirements and provides an adequate service to the community. Where it appears that a site cannot be found that allows line-of-sight coverage over the community or a transmission path free of major obstructions, as recommended by Section 73.315, the proponent must demonstrate by an engineering showing that the received signal strength as transmitted from that site will exceed 70 dBu and encompass the entire principal community. Here, then, suitability is determined by whether a 70 dBu signal can be provided over Creswell from the site on Hansen Butte, not whether it is available, as Alexander misperceives. Keffco appropriately submits an engineering study, but fails to resolve the substantial question as to whether a site exists from which Creswell could receive the requisite 70 dBu city-grade signal.

9. Tech Note 101 differs from the Commission's propagation model,[4] but engineering studies premised on Tech Note 101 are sometimes submitted as a supplemental showing in cases such as this one, where the terrain departs widely from "average terrain." For the showing to be at all useful, the procedures used in preparing the study must be described as well as the assumptions made and the methodology employed, and, in addition, sample calculations should be provided. *See Reno, Nevada*, 3 FCC Rcd 5631 (1988). We agree with the opposition that Keffco's engineering statement provides us with few specifics in this regard, not enabling us to properly evaluate the study nor verify its conclusions. On this basis, the study is inadequate to sustain Keffco's burden to establish the validity of particular application of Tech Note 101, and to demonstrate that the required 70 dBu signal would be delivered to Creswell.

10. Moreover, we agree with Alexander that the substance of the study is questionable as well. For example, rather than using the F(50,50) curves, Keffco assumed free-space propagation, which it can be assumed would result in an overestimate of the field strength values predicted in Creswell. Keffco's engineering study explains that the signal losses determined in accordance with free-space propagation would be further attenuated by perturbations that are essentially normally distributed. However, no correlation of any sort is given between the field strength of such signals and the field strength of signals predicted by our F(50,50) curves. Its mere statement of a form of the equation for a Gaussian or normally distributed probability density function does not prove the adequacy of the analysis or that the field strengths that are stated to have been derived therefrom were accurate. Here also, no details are offered of the methodology employed nor are there any sample calculations provided to demonstrate how, and to verify whether Keffco indeed did arrive at some equivalence between its determination of field strength and that derived from use of the F(50,50) curves.

11. We also find that Keffco's use of knife-edge diffraction theory is highly questionable to determine the losses over and around an isolated, rounded obstruction like Creswell Butte. The "roundness" of Creswell Butte and its effect on diffraction calculations are not investigated. A signal traversing a rounded obstruction is attenuated to a significantly greater degree than in the knife-edge case. The opposition contends that the diffraction attenuation is underestimated by about 10-15 dB. While we cannot determine definitely whether this is accurate or not, because of the lack of detail as to how Keffco derived its results, we conclude nevertheless that Keffco's use of knife-edge diffraction likely contributed to a substantial overestimate of the signal strength to be received in Creswell.[5]

12. There are other instances in which Keffco's engineering statement derives unsupportable results. For example, Keffco's use of 30-second data (that it now concedes are too coarse to model terrain features like Creswell Butte) did contribute to its overestimate of received field strength. Although Keffco now reports that using far more accurate data from 7.5 minute maps, the proposed upgraded station would deliver a signal of 76.4 dBu rather than the 81.6 dBu originally claimed in its Petition, again there are no sample calculations provided, the degree to which propagation according to free-space

or to the F(50,50) curves applies is not analyzed, and whether the diffraction losses are properly determined is not dealt with.

CONCLUSION

13. We find that Keffo's engineering statement rests on questionable assumptions, which is exacerbated by its failure to articulate its rationale for those assumptions. The engineering study did not provide the necessary detail to verify the accuracy of its results and the underlying assumptions used in deriving them. Furthermore, no description of the methodology is given nor are there any sample calculations provided to demonstrate how the methodology was used to derive the results. Substantively, we conclude that Keffco overestimates the predicted signal strengths largely due to its questionable assumptions of free-space propagation and knife-edge diffraction. We further conclude that it is unlikely that a minimum 70 dBu signal would be placed over the whole of Creswell. Therefore, we will deny Keffco's petition for reconsideration.

14. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED That the Petition for Reconsideration filed by the Keffco, Inc. IS DENIED.

15. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact J. Bertron Withers, Jr., Mass Media Bureau, (202)632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Keffco also indicates that it has obtained a letter of authorization to use another site in the same general area as Hansen Butte.

[2] For example, Keffco assumes that its consideration of the signal attenuation along only a single radial passing through the peak of the obstruction is sufficient, because the attenuation will be less along any other radial. Of course, along that single radial, it follows that the signal strength available in Creswell would be at its minimum, which Keffco's engineering statement claims would be greater than 70 dBu.

[3] More specifically, Alexander contends that Keffco's assumption of free-space overestimates the values of field strength by "as much as 8 dB" over that predicted by the Commission's F(50,50) curves, which estimate median field strength values, taking into account the signal strength that would be exceeded at 50% of the receiver locations for 50% of the time. Alexander notes that free-space attenuation does not take into account this time and location variability. Alexander argues further that Keffco's predicted signal strength is further inflated by its use of a single radial from the proposed transmitter to Creswell Butte and its modeling of that butte as a knife-edge obstruction. These assumptions, argues Alexander, produce diffraction losses "on the order of 10-15 dB" less than they would be were the butte modeled more accurately as a rounded obstruction. Alexander also notes that Keffco does not use the correct procedure for predicting the F(50,50) coverage within the shadowed areas within Creswell. The correct procedure entails the addition of 2.0 dB to the F(50,50) field strength values calculated for each point. By then subtracting the diffraction losses, which, Alexander insists, can be derived accurately only using data taken from a 7.5 minute map for a relatively small obstruction like Creswell Butte, the correct values for the prediction of field strength can be obtained.

[4] The Commission's model predicts the field strength at distances from the transmitter according to the F(50,50) propagation curves in §73.333. These curves specify the estimated median field strengths expected to occur 50% of the time at 50% of the receive locations over a rolling or "average" terrain. The F(50,50) curves are based on empirical data and are applied whatever the actual terrain or other conditions. Tech Note 101, on the other hand, estimates field strengths while taking into account specific transmission paths and terrain features, and other factors such as the atmospheric refractivity near the earth's surface, and characteristics of antenna directivity.

[5] We also question whether Keffco's use of single radial over the peak of a butte would result in the maximum attenuation of the signal. Due to the variation in the radius of curvature (or roundness), the attenuation along these other radials could be greater, even where the radial traverses the butte at elevations lower than that of the peak.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-362

In re Applications of

DON H. BARDEN	File No. BPH-860507PR
GRAND RAPIDS 98, INC.	File No. BPH-860507PS
HAITH BROADCASTING CORPORATION	File No. BPH-860507PT

For a Construction Permit for a
New FM Station on Channel 255A
in Grand Rapids, Michigan

Appearances

Rachael O. Davis, *Denise Moline*, and *Robert G. Allen*, on behalf of Don H. Barden; *Ann C. Farhat*, on behalf of Grand Rapids 98, Inc.; *Robert W. Healy*, on behalf of Haith Broadcasting Corporation; and *Norman Goldstein*, on behalf of the Chief, Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: September 21, 1989 Released: September 27, 1989

PRELIMINARY STATEMENT

1. By *Hearing Designation Order (HDO)*, DA 88-1087, released August 10, 1988, the applications of Don H. Barden (Barden); Grand Rapids 98, Inc. (98, Inc.) and Haith Broadcasting Corporation (Haith)[1] were designated for hearing on the following issues:

> 1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: 98, Inc.
>
> 2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> 3. To determine, in light of the evidence adduced, pursuant to the foregoing issues, which of the applications should be granted, if any.

2. By *Order*, FCC 88M-3861, released November 14, 1988, the air hazard issue designated against 98, Inc. was resolved in its favor pursuant to a Motion for Partial Summary Decision.

3. A prehearing conference was held on October 17, 1988. An evidentiary hearing was held in Washington, D.C. on March 6, 1989, on which date the record was closed (Tr. 92). Proposed Findings of Fact and Conclusions were filed on April 27, 1989; replies were filed May 11, 1989.

FINDINGS OF FACT

Don H. Barden

4. Barden is an individual applicant (Barden Ex. 1 at 3). He does not propose to work, either on a full-time or part-time basis, at his proposed station. *Id.*

5. As of June 20, 1986, the cut-off date for filing amendments as of right in this proceeding, Barden was President, sole director, and 100% owner of Barden Communications, Inc. *Id.* Barden Communications, Inc. in turn owned 80% of Barden Cablevision of Inkster, Inc., which owns the cable television system serving Inkster, Michigan. *Id;* (Barden Ex. 1A at 1). Inkster, Michigan is a suburb of Detroit, Michigan, which is located approximately 148 miles from Grand Rapids (Barden Ex. 1A at 1; Barden Ex. 1 at 6). Since the cut-off date, Barden Communications, Inc. has merged with Barden Cablevision of Inkster, Inc. (Barden Ex. 1 at 4). Barden now owns 95.3% of Barden Communications, Inc. *Id.*

6. As of June 1986, the Inkster cable system passed 11,500 homes, and served 3,900 subscribers (Barden Ex. 1A at 1). The Inkster system currently passes 11,500 homes and has 4,100 subscribers. *Id.* In June 1986, the Inkster system did not produce any significant amount of local programming, and it has not produced any significant amount of local programming for the months of January and February, 1989. *Id.*

7. As of June 1986, Barden Communications, Inc. owned 100% of Barden Cablevision of Van Buren, Inc., the corporate owner of the cable system serving Van Buren Township, Wayne County, Michigan (Barden Ex. 1 at 4; Barden Ex. 1A at 1; Barden Ex. 1 at 4). Van Buren Township, Wayne County, Michigan is located approximately 125 miles from Grand Rapids. Cover Letter to Barden Ex. 1A. In June 1986, the Van Buren cable system passed 5,500 homes with a subscribership of 1,900 (Barden Ex. 1A at 1). At that time, the Van Buren cable system did not produce any significant amount of local programming. *Id.* Barden's interest in the Van Buren cable system was divested as of March 30, 1988 (Barden Ex. 1 at 4).

8. As of June, 1986, Barden Communications, Inc. also owned 100% of Barden Cablevision of Romulus, Inc., the corporate owner of the cable system serving Romulus, Michigan. *Id.* Romulus, Michigan is a suburb of Detroit, Michigan (Barden 1A at 1). In June 1986, the Romulus cable system passed 6,500 homes with a subscribership of 1,700. *Id.* At that time, the Romulus cable system did not produce any significant amount of local programming. *Id.* Barden's interest in the Romulus cable system was divested as of March 31, 1988 (Barden Ex. 1 at 4).

9. As of June, 1986, Barden Communications, Inc. owned 95% of Barden Cablevision of Detroit, Inc., which in turn owned 51% of Barden Cablevision, the franchisee of a cable system serving Detroit, Michigan. *Id.* In June of 1986, the Detroit cable system was not in operation (Barden Ex. 1A at 1). The Detroit cable system is presently under construction but currently passes 170,000 homes, with a subscribership of 59,000. *Id.* The Detroit cable system has the potential to pass 380,000 homes. *Id.*

Barden presently is President, Director, and owns 95.3% of Barden Communications, Inc., which in turn owns 40.8% of Barden Cablevision partnership, the owner of the Detroit cable system (Barden Ex. 1 at 4-5).

10. The Detroit cable system produces for broadcast on one channel an average of seven to eight hours of local origination weekly (Barden Ex. 1A at 1). The local origination channel is activated 8 to 11 hours a day. *Id.* The same programming is generally shown seven times, once a day for a week. *Id.* An average of one to three hours of local programming, produced by cable television systems that Barden neither controls nor owns an interest, are shown on the Detroit system once a day for a week. *Id.*

11. For approximately 11 months in 1986 and 1987, Barden was President and sole Director of Cablevision Investment of Detroit, Inc., an investment group which held a 10.2% partnership interest in Barden Cablevision partnership, the owner of the Detroit cable system (Barden Ex. 1 at 5). Barden resigned from these positions effective October 7, 1987. *Id.*

12. Barden holds an interest of less than 1% in North Coast Cable Limited Partnership, the owner of a cable television system in Cleveland, Ohio. *Id.* He is neither an officer nor a director of North Coast. *Id.* Barden is unaware of the amount of local origination programming provided by the Cleveland cable system (Barden Ex. 1A at 1).

13. Barden is an officer, director, and 100% owner of Barden Broadcasting of Coal City, Inc., the permittee of a Class A FM station in Coal City, Illinois (Barden Ex. 1 at 5). Coal City, Illinois is located approximately 225 miles from Grand Rapids. *Id.* at 7.

14. Barden is an individual holder of a construction permit for a Class A FM station in Pittsburg, Texas. *Id.* at 5. Pittsburg, Texas is located approximately 825 miles from Grand Rapids. *Id.* at 7.

15. Barden does not propose to install auxiliary power.

Grand Rapids 98, Inc.

16. 98, Inc., is a corporation organized under the laws of the state of Michigan. Benjamin H. Logan, II of Grand Rapids, Michigan, is the sole officer and director of 98, Inc. Logan holds 100% of the voting and a certain amount of non-voting stock which combined represent 60% of the equity in 98, Inc. Logan does not propose to be integrated into the management of 98, Inc.'s proposed station.

17. Neither 98, Inc., Logan, nor any of the non-voting stockholders of 98, Inc. have any interest in any media of mass communications (98, Inc. Ex. 1).

18. 98, Inc. will install auxiliary power so as to allow the station to remain on the air in the event of a commercial power outage (98, Inc. Ex. 2).

Haith Broadcasting Corporation

19. Haith is a corporation organized under the laws of the State of Michigan. Lynda Haith is the sole officer, the sole director and the sole stockholder of Haith (Haith Ex. 1). Ms. Haith will work full-time (40 hours per week or more) at the Grand Rapids station as its General Manager. As such, she will be responsible for the station's programming, sales, contacts with community leaders and the implementation of the station's Equal Employment Opportunity Program. She has no plans to terminate her role as General Manager in the foreseeable future (Haith Ex. 3).

20. Ms. Haith has no previous broadcast experience (Tr. 74). She intends to hire an experienced station manager who will report to her. Ms. Haith will be the decision-maker and the station manager will implement those decisions (Tr. 88).

21. Neither Lynda Haith, nor Haith has any interest in any medium of mass communications (Haith Ex. 2).

22. Lynda Haith is thirty-nine years old (Tr. 67). She has lived in Grand Rapids, Michigan since 1982 (Haith Ex. 4). Ms. Haith earned the money to put herself through both college and graduate school (Tr. 48). She holds a Bachelor's degree in architectural engineering and a master's degree in business administration (Tr. 45, 48). Ms. Haith is a black female (Haith Ex. 4).

23. Ms. Haith has supervised both professional and trade employees during her 22 years of employment (Tr. 48, 56). She has managed the development of many major construction projects during the entire process from the idea state to creating a physical environment (Tr. 56). Ms. Haith's career in business began as a draftsman in 1967, since which, she has had a progression of more responsible positions that included supervising people and client contact (Tr. 52).

24. From 1982 to 1986, Ms. Haith was project manager supervising all capital improvement programs for the City of Grand Rapids (Tr. 50). In this position she handled all of the contracts with the consultants and the contractors; administrating the contracts; approving payments and generally handling all of the capital improvement programs that the city and the building authorities undertook (Tr. 50).

25. Since filing the application on May 7, 1986, Lynda Haith worked on a contract basis, between August of 1986 and November of 1987 for Grand Valley State (Tr. 49). She managed the construction of the television and radio stations of the school's downtown campus facilities (Tr. 49-50, 53). From November of 1987 until September of 1988 she worked on the construction of the Detroit Prison (Tr. 47-49). In these positions she supervised the construction superintendent, who reported to her and she had the power to hire and fire (Tr. 89).[2]

26. From 1984 to date, Ms. Haith served with the United Way Allocation Panel as a lead chairman, to determine the amount of funding support for respective charity/community organizations. She spends about 30-40 hours a year on the activities of this organization (Haith Ex. 4).

27. Between 1985 and 1986, Ms. Haith participated on the Campaign Strategy Subcommittee of the Coalition for Representative Government, spending about two hours a month. This group works for the election and appointment of minority persons to governmental positions (Haith Ex. 4).

28. Between 1986 and 1987, she was a member of the Personnel Subcommittee and the Brick and Mortar Committee of the Urban League Board of Directors, which serves to enhance the employment and educational abilities of the disadvantaged community. She spent about two hours a month with the Board providing direction for the overall administration of the League. She spent about 15

hours a week for six months using her expertise with the Brick and Mortar Committee, which acted as advisor for the renovation of the League's facilities (Haith Ex. 4).

29. Ms. Haith was a member of the Board of Directors of the YMCA between 1986 and 1987, attending Board meetings once a month, for approximately two hours each. Additionally, using her expertise, Ms. Haith spent between 14 to 15 hours a month helping the Building Committee with disputes over the performance of architects and contractors during the YWCA's renovation. She also served on the Strategy Ad Hoc Committee which developed strategy for marketing the newly renovated facility. Ms. Haith also coached a girl's basketball team between 1985 and 1987 (Haith Ex. 4). All of these civic activities were in Grand Rapids (Tr. 36).

30. Haith will install auxiliary power at her station so as to allow it to remain on the air in the event of a commercial power outage (Haith Ex. 4).

CONCLUSIONS

31. 98, Inc. and Haith have no other media interests. Barden, however, has controlling or substantial interests in several cable systems in Michigan. Barden also holds the construction permits for two FM stations. Barden's extensive media interests warrant awarding 98, Inc. and Haith a moderate diversification preference. *See Martin Intermart, Inc.*, 3 FCC Rcd. 1650 (Rev. Bd. 1988). Unlike *Greater Wichita Telecasting, Inc.*, 96 FCC 2d 984 (1984), cited by Barden, where a slight preference was awarded, the competing applicants here have no media interests. Further, the cable interests here are far more substantial and are not located in distant cities. In this connection, contrary to Barden's unsupported argument, diversity of ownership has been and remains of "primary significance" in the award of a new facility between and among comparative applicants. *See Martin Intermart, supra.*

INTEGRATION

32. 98, Inc. and Barden do not seek integration credit. Haith is the only party that seeks integration credit. Lynda Haith, the sole officer, director and shareholder, will serve full-time as the station's general manager. Haith will receive 100% full-time quantitative integration credit.

33. 98, Inc. and Barden assert that Haith's integration proposal should not be credited. However, their contention rests solely on speculation and conjecture and finds no support in the record and is rejected. Barden argues that Haith has failed to make any distinction between her role as general manager and that of the station manager she proposes to employ. The argument is without basis. As noted by Barden, a general manager and station manager perform distinct functions. *Newton Television, Ltd.* (Rev. Bd. 1988). Moreover, the record evidence is clear that the station manager will be a subordinate of Haith, the 100% owner, who will set overall station policy (Tr. 88). Haith's opponents also fault Haith for her proposal to lease tower, studio and equipment from a local car dealer. The written lease agreements have been freely and fully disclosed. The record is devoid of any evidence indicating that the lessor will exercise any control over the station's operation.[3] Suffice it to say, Haith's opponents have failed to adduce any evidence which would justify a diminution in Haith's integration credit. Her full-time integration proposal is fully credited.

34. Ms. Haith who has lived in Grand Rapids since 1982, receives local residence enhancement. In addition, the record establishes that Ms. Haith has been actively involved in a number of civic organizations. She has served in leadership roles in those organizations. Her record in these organizations entitles Haith to substantial civic participation credit. Haith also receives substantial minority and gender credit for its 100% black female ownership and participation in the proposed FM station.

AUXILIARY POWER

35. 98, Inc. and Haith receive credit for their auxiliary power proposals.

FINAL COMPARATIVE EVALUATION

36. Barden receives a moderate diversification demerit and is entitled to no quantitative integration credit. While 98, Inc. has no diversification credit demerit, it too is entitled to no integration credit. Haith has no diversification demerit and is entitled to 100% integration credit enhanced by local residency, civic participation and minority and female enhancement credit. Haith is the clear winner and its application will be granted.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules,[4] the application of Haith Broadcasting Corporation for a construction permit for a new FM station on Channel 255A in Grand Rapids, Michigan IS GRANTED; and the applications of Don H. Barden and Grand Rapids 98, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

FOOTNOTES

[1] The applications of David K. Kuiper and Stone Communications, which were also designed for hearing have been dismissed for want of prosecution. *See, Order*, FCC 88M-2960, released September 9, 1988. By *MO & O*, released February 21, 1989 (FCC 89M-594) the agreement by which FM Grand Rapids Limited Partnership was to dismiss its application in consideration of a payment of $35,000 by Haith was approved and its application was dismissed.

[2] Ms. Haith has not been employed since September 1988. She does not intend to take on another contract until she is in a better position to determine the outcome of her application. Ms. Haith believes it would be unfair to take on another contract and then have to stop in the event she receives a construction permit. In this connection, Ms. Haith thought there was a possibility of settlement (Tr. 48, 68).

[3] Barden's request for a real party in interest issue on the basis of this lease arrangement has been denied. *See MO & O*, FCC 89M-1825, released July 10, 1989.

[4] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-610

In the Matter of

Amendment of Section 73.202(b), RM-6496
Table of Allotments,
FM Broadcast Stations.
(Wellston, Ohio)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 21, 1989; Released: September 27, 1989

By the Chief, Allocations Branch:

1. At the request of Jackson County Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 1230 (1989), proposing the substitution of Channel 244B1 for Channel 244A at Wellston, Ohio, and the modification of its license for Station WKOV-FM to specify the higher powered channel. The petitioner filed supporting comments. No other comments were received.

2. We believe the public interest would be served by substituting Channel 244B1 for Channel 244A at Wellston, Ohio, since it could enable Station WKOV-FM to expand its coverage area. Channel 244B1 can be allotted to Wellston in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site.[1] Canadian concurrence has been received since Wellston is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Wellston, Ohio	244B1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Jackson County Broadcasting, Inc. for Station WKOV-FM, Wellston, Ohio, IS MODIFIED to specify operation on Channel 244B1, in lieu of Channel 244A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 39-01-45 and West Longitude 82-35-51.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Commission Requirements for
Cost Support Material To Be
Filed with January 1, 1990,
Access Tariff Revisions

ORDER

Adopted: September 18, 1989 Released: September 27, 1989

By the Chief, Common Carrier Bureau:

1. On September 1, 1989, the Common Carrier Bureau released an Order in the above-captioned matter establishing, *inter alia*, the schedule for filing updated revisions to local exchange carrier access tariff rates. On September 11, 1989, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, Ohio Bell Telephone Company, and Wisconsin Bell, Inc. (Ameritech Operating Companies), filed a motion for extension of time requesting that the deadline for filing replies to petitions and comments regarding the proposed revisions be extended from November 27, 1989, to December 1, 1989.

2. Ameritech states that the staff members who are responsible for responding to any petitions and comments are based in Chicago, Illinois, and would be unable to obtain copies of such pleadings before November 21, just prior to the Thanksgiving Day holiday. Ameritech Motion at 1-2. Ameritech further states that the current schedule would allow the companies little more than one business day to prepare any necessary response. *Id.*

3. The Common Carrier Bureau has reviewed Ameritech's motion and concludes that the public interest would be served by a grant of Ameritech's request. We also conclude that other interested parties should be granted a similar extension of time. Therefore, all replies to petitions and comments shall be filed not later than December 1, 1989.

4. Accordingly, IT IS ORDERED that the motion for extension of time filed by the Ameritech Operating Companies with regard to the above-captioned proceeding IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NORTHWESTERN BELL
TELEPHONE COMPANY
Petition for Declaratory Ruling

ORDER

Adopted: September 18, 1989 Released: September 20, 1989

By the Chief, Common Carrier Bureau:

1. On September 15, 1989, Teleconnect Company (Teleconnect) filed a Motion[1] requesting that its deadline for responding to questions posed in the Order Instituting Further Proceedings on Remand in the above-captioned proceeding[2] be extended one week from September 18, 1989, to September 25, 1989. In support of its motion, Teleconnect states that the company has experienced various corporate reorganizations in the period since this matter was first initiated in 1986. As a result, "personnel familiar with this matter and the network on which the original order was based have changed," according to Teleconnect. [3] Thus, it states that responding to the factual questions posed in the *August 1 Order* has proved unexpectedly difficult and time-consuming.[4] Teleconnect adds that no party will be prejudiced by grant of its request and that the additional time will permit a more complete and accurate response. Teleconnect further states that it has orally notified the Commission and the other parties of the need for additional time in which to prepare its response.[5] Teleconnect represents that petitioner Northwestern Bell Telephone Company will not oppose its request.

2. Based on the information presented in Teleconnect's Motion, we grant the requested extension of time. Although Commission policy is that extensions of time shall not be routinely granted,[6] the Motion demonstrates that the technical questions raised have proved unexpectedly difficult to answer and "cannot be adequately addressed within the normal time allowed".[7] In light of the fact that the Commission requested remand of this proceeding in order to resolve the factual questions which Teleconnect is in the process of answering, we believe it reasonable to grant a one-week enlargement of time. We will adjust the time for filing comments and replies accordingly.

3. Accordingly, IT IS ORDERED, that the Teleconnect Motion for Extension of Time, as amended, IS GRANTED, and that the time for Teleconnect to file its response to the issues posed in the *August 1 Order* IS EXTENDED to September 25, 1989. The time for filing comments on Teleconnect's response IS EXTENDED to November 9, 1989, and the time for filing replies IS EXTENDED to December 11, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Motion for Extension of Time of Teleconnect Company, filed Sept. 15, 1989 (Motion), *amended*, Amendment to Motion for Extension of Time and Certificate of Service, filed Sept. 18, 1989 (Amendment).

[2] Order Instituting Further Proceedings on Remand, DA 89-860, released August 1, 1989 (*August 1 Order*).

[3] Motion at 2 (footnote omitted).

[4] Motion at 2.

[5] Motion at 3; Amendment at 1.

[6] 47 C.F.R. § 1.46 (a).

[7] Public Notice, Motions for Extension of Time before the Common Carrier Bureau, 44 RR 2d (P & F) 96 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PUERTO RICO
TELEPHONE COMPANY
Equal Access Conversion Schedule

ORDER

Adopted: September 20, 1989 Released: September 21, 1989

By the Chief, Common Carrier Bureau:

1. On September 19, 1989, the Puerto Rico Telephone Company (PRTC) filed a request for extension of time, asking that the date for filing reply comments in this proceeding be extended from September 21, 1989[1] to September 26, 1989.[2] Counsel for PRTC state that they have been unable to reach PRTC because of damage caused by Hurricane Hugo in Puerto Rico. Counsel for PRTC state that telephone lines have been unavailable for voice and facsimile communication and that communication by "mail and overnight service" has been impossible and that "the airport is closed." Moreover, Counsel for PRTC state that officers from PRTC will undoubtedly be occupied with restoring telephone service in Puerto Rico after the storm. Thus, Counsel for PRTC request three additional business days in which to prepare reply comments.

2. Counsel for PRTC also state that they have orally contacted all of the parties filing in this proceeding except General Comserv Corporation (Comserv) concerning the extension request. Counsel for PRTC have been unable to contact Comserv, which is located in Puerto Rico, due to the hurricane. PRTC's Counsel state that the American Telephone and Telegraph Company, MCI Telecommunications Corporation, and Contel ASC do not object to the motion for extension of time.

3. While we do not routinely grant extensions of time,[3] we are convinced that the public interest in the development of a full and complete record in this proceeding would be served by allowing additional time for the filing of replies.[4] Thus, we conclude that it is appropriate to extend the date for filing replies to September 26, 1989, as requested.

4. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Communication's Rules, 47 C.F.R. §§ 0.91 and 0.291, that PRTC's motion IS GRANTED, and that reply comments in this proceeding ARE TO BE FILED by September 26, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] FCC Public Notice, DA 89-902 (Pleading Cycle Established for Comments on Puerto Rico Telephone Company's Petition for Declaratory Ruling, or in the Alternative, Waiver), released August 3, 1989.

[2] Motion of Puerto Rico Telephone Company for Extension of Time to File Reply Comments, filed by Puerto Rico Telephone Company on September 19, 1989.

[3] Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).

[4] In light of the emergency situation in Puerto Rico created by Hurricane Hugo, we accept Counsel for Puerto Rico's late-filed motion for extension of time. *See* Section 1.46(b) of the Commission's Rules, 47 C.F.R. §146(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: September 21, 1989

COMMENT SOUGHT ON EXTENSION OR REVISION OF THE CURRENT RATE OF RETURN PRESCRIPTION FOR INTERSTATE SERVICES OF LOCAL EXCHANGE CARRIERS

(CC Docket No. 87-463)

It is this Commission's practice to prescribe an allowed rate of return for the interstate services of local exchange carriers (LECs). The most recent such prescription was made in 1988 and extends through December 31, 1989. *Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT & T Communications and Local Exchange Carriers*, CC Docket No. 87-463, Notice of Proposed Rule Making, 52 Fed. Reg. 39251 (October 21, 1987), 2 FCC Rcd 6491 (1987); Memorandum Opinion and Order, 3 FCC Rcd 1697 (1988). This Public Notice requests updated financial and economic data in order to determine whether the current prescription should be extended or revised temporarily beyond December 31, 1989.

Part 65 of the Commission's Rules, 47 C.F.R. §§ 65.1 *et seq.*, contains procedures and methodologies for prescription of interstate rates of return. The Commission adopted Part 65 in December, 1985. *Authorized Rates of Return for the Interstate Services of AT & T Communications and Exchange Telephone Companies*, 51 Fed. Reg. 1796 (January 15, 1986), *modified on recon.* 104 FCC 2d 1404 (1986). At that time, the Commission contemplated that it would conduct a represcription proceeding in 1986 to determine rates of return for the period 1987-88, and that this process would be repeated biennially thereafter. *See* 47 C.F.R. §§ 65.102(c). In accordance with these rules, the Commission prescribed a 12% rate of return for the LECs for the 1987-88 period. *Authorized Rates of Return for the Interstate Services of AT & T Communications and Exchange Telephone Companies*, 51 Fed. Reg. 32920 (September 17, 1986), *recon. denied* 2 FCC Rcd 5636 (1987).

In October, 1987, the Commission issued a Notice of Proposed Rule Making proposing to change several important elements of the Part 65 rules before the next represcription cycle. *Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers*, CC Docket No. 87-463, 52 Fed.Reg. 39251 (October 21, 1987), 2 FCC Rcd 6491 (1987) . In partial response to comments submitted in that proceeding, the Commission decided in March, 1988, to defer the represcription cycle for one year so as to allow more time for the development of new methodologies and procedures. *Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers*, 3 FCC Rcd 1697 (1988). Under the terms of this Order, initial rate of return submissions were to have been filed January 3, 1989. The Commission found that the rate of return prescribed in 1986 was still reasonable and extended it through 1989. *Id.* at 1698.

In October, 1988, Ameritech and BellSouth separately filed petitions seeking further extensions of both the filing date for initial submissions and the prescription period. *See Public Notice*, DA 88-1604, released October 17, 1988, 4 FCC Rcd 1303 (1989). Comments supporting the petitions were filed by several LECs, AT&T, and the United States Telephone Association. The BellSouth petition was opposed by Telus Communications, an interexchange carrier offering service in several Florida cities. On December 7, 1988, the Common Carrier Bureau responded to the petitions by postponing the filing date for rate of return submissions until June 30, 1989. The Bureau stated that the request to extend the rate of return prescription period would be dealt with in a subsequent order. *Deferral of Rate of Return Represcription Filings Pursuant to Section 65.102(c) of the Rules*, AAD 8-1930, 3 FCC Rcd 7220 (1988).

On March 16, 1989, the Commission adopted an order proposing to adopt a system of price cap regulation for LECs. *See Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873 (1989). On May 3, 1989, the Common Carrier Bureau further deferred the filing date for initial rate of return submissions until 90 days following the release of a Report and Order in CC Docket No 87-463. The Bureau stated that the additional issues raised by the Commission's consideration of price cap regulation would preclude completion of the proceedings in Docket 87-463 in time for carriers to meet the previously established June 30, 1989 deadline. *Deferral of Rate of Return Represcription Filings Pursuant to* Section 65.102(c), AAD 8-1930, 4 FCC Rcd 3920 (1989). The Bureau noted that "the continued viability of the currently authorized rate of return, the need for any extension of the current prescription period, and the possibility of prescribing revised, temporary rates of return until the Commission completes the Part 65 rule modifications" would be addressed in a subsequent order. 4 FCC Rcd at 3921 n.13.

It is now proposed to extend, or possibly revise, the current rate of return prescription for a period to last until December 31, 1990, or until a subsequent prescription proceeding is completed, whichever comes first. Beyond the interim steps considered here, a represcription proceeding will be undertaken under Part 65 of the Commission's Rules, as they exist or may be amended. The action proposed in this Notice is undertaken pursuant to the Commission's authority under §§ 4(i) and (j), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 205, and 403.

Interested parties are requested to submit financial data and other comments addressed to the question whether the conditions which supported the 1986 prescription have changed so substantially as to require revision of that prescription.

Any party that would be required to file initial rate of return submissions pursuant to § 65.200(b) of the Commission's Rules is requested to include in its comments the following information: (a) its current embedded cost of debt, with a complete explanation of the manner in which it was computed; (b) its current debt-equity ratio; and (c) the state cost of capital information specified in § 65.201(a) of the Commission's Rules. Parties also may

submit cost of equity analyses using any reasonable method, provided they include all underlying assumptions, data, and calculations.

All petitions and pleadings submitted in File No. AAD 8-1930 will be transferred to CC Docket No. 87-463 and will be considered to be part of the record in this prescription proceeding.

Comments in this matter may be filed no later than **October 23, 1989.** Replies should be filed by **November 10, 1989.** All filings should refer to Docket No. 87-463.

Copies of all pleadings previously filed in AAD 8-1930 and CC Docket No. 87-463 may be obtained from International Transcription Services, 2100 M Street, NW, Washington, DC 20036, (202) 857-3800. Copies are also available for public inspection and copying in the Dockets Branch, Room 230, 1919 M St., NW, Washington, D.C. 20554

For further information contact Jane Jackson at (202) 632-7500 or Jay Atkinson at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH CO. File No. I-T-C-89-129

Application for authority to acquire and operate facilities for service between the U.S. and Egypt.

ORDER AUTHORIZATION AND CERTIFICATE

Adopted: September 21, 1989 Released: September 28, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on June 29, 1989 by American Telephone and Telegraph Co. (AT&T), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire, activate and operate cable and connecting facilities for the provision of AT&T's regularly authorized services between the U.S. and Egypt. The application was placed on public notice on July 12, 1989. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Egypt by AT&T.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-129 IS GRANTED, and AT&T is authorized to:

a. reacquire from the Turkish PTT (TPTT), a one-half interest in seven voice-grade circuits in the TAT-6 cable previously granted by AT&T to TPTT on an indefeasible right of user (IRU) basis for use with Turkey;

b. activate and operate 12 voice-grade whole circuits in the TAT-6 cable;

c. lease from the French PTT and operate the necessary connecting facilities between the TAT-6 and SEA-ME-WE cable terminals;

d. activate and operate 12 TASI-E derived voice-grade cable circuits; and

e. use said facilities to provide AT&T's regularly authorized services between the U.S. and Egypt and beyond.[1]

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an IRU agreement between AT&T and the Turkish PTT and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] AT&T states that: (i) its correspondent in Egypt, the Arab Republic of Egypt National Telecommunications Organization (ARENTO) will provide and bear the entire cost of 12 whole circuits in the SEA-ME-WE cable and (ii) the TAT-6 circuits AT&T will provide have a lower net book cost than the SEA-ME-WE circuits which ARENTO will provide.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN NETWORK EXCHANGE, INC. File No. I-T-C-89-148

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 21, 1989 Released: September 28, 1989

By the Chief, International Facilities Division:

1. The above-captioned application filed on July 26, 1989 by American Network Exchange, Inc. (AMNEX) requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on August 9, 1989. No comments were received.

2. The applicant is a non-dominant domestic resale common carrier. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by AMNEX.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-148, IS GRANTED, and AMNEX is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2, between the United States and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1988).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP.

Application for authority to acquire and operate facilities for direct service between the U.S. and Luxembourg.	File No. I-T-C-89-150
Application for authority to acquire and operate facilities for direct service between the U.S. and Bahrain.	File No. I-T-C-89-151
Application for authority to acquire and operate facilities for direct service between the U.S. and Paraguay.	File No. I-T-C-89-152

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 21, 1989 Released: September 28, 1989

By the Chief, International Facilities Division:

1. The above-captioned applications filed on July 31, August 4 and August 9, 1989, respectively, by MCI Telecommunications Corp. (MCI) request authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate facilities for the provision of its regularly authorized common carrier services between the U.S. and Luxembourg, Bahrain and Paraguay. The applications were placed on public notice on August 9 and 16, 1989. No comments were received. Upon consideration of the applications, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require MCI's acquisition and operation of the subject facilities for the provision of its regularly authorized common carrier service between the U.S. and Luxembourg, Bahrain and Paraguay.

2. Accordingly, IT IS ORDERED that application File Nos. I-T-C-89-150, I-T-C-89-151 and I-T-C-89-152 ARE GRANTED, and MCI is authorized to:

a. reassign for service to Luxembourg its one-half interest in 12 voice-grade circuits in the TAT-6 cable jointly owned by MCII and its correspondents in the United Kingdom and/or, France and/or Belguim;

b. lease from AT&T and operate 12 voice-grade circuits between Greenhills, Rhode Island TAT-6 cable station and MCI's Crystal Lake, NJ operating center;

c. lease a one-half interest in and operate the necessary connecting facilities between the TAT-6 cable station at St. Hillaire de Riez, France and the border of Luxembourg;

d. use the facilities in subparagraphs a, b and c above to provide MCI's regularly authorized services between the U.S. and Luxembourg and beyond;

e. lease from Comsat and operate 24 voice-grade satellite circuits between the Etam, WV earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Bahrain, furnished by MCI's correspondent in Bahrain;

f. lease from AT&T and operate 24 voice-grade circuits in the Etam, WV earth station;

g. lease from AT&T and operate 24 voice-grade circuits between the Etam, WV earth station and MCI's West Orange, NJ operating center;

h. use the facilities in subparagraphs e, f and g above to provide MCI's regularly authorized services between the U.S. and Bahrain and beyond;

i. lease from Comsat and operate 12 voice-grade satellite circuits between the Etam, WV earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Paraguay furnished by MCI's correspondent in Paraguay;

j. lease from AT&T and operate 12 voice-grade circuits in the Etam, WV earth station;

k. lease from AT&T and operate 12 voice-grade circuits between the Etam, WV earth station and MCI's West Orange, NJ operating center; and

l. use the facilities in subparagraphs i, j and k above to provide MCI's regularly authorized services between the U.S. and Paraguay and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between MCI and its correspondents in Luxembourg, Bahrain and Paraguay, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1988).

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applica-

tions for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INCORPORATED — File No. I-T-C-89-149

Application for authority to acquire and operate facilities for direct service between the U.S. and Denmark.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 21, 1989 Released: September 28, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on August 1, 1989, by TRT International, Inc. (TRTI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate facilities for direct service between the U.S. and Denmark. The application was placed on public notice on August 9, 1989. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Denmark by TRTI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-149 IS GRANTED, and TRTI is authorized to:

a. utilize on a cost flow-through basis[1] a one-half interest in two Minimum Assignable Units of Ownership (MAUOs) in the U.K. leg of TAT-8 cable owned by TRTI's affiliate TRT Telecommunications, Corp. now assigned for service to Denmark (1) and Finland (1);

b. utilize on a cost flow-through basis[2] a one-half interest in four MAUOs in the U.K. leg of TAT-8 cable owned by TRTI's affiliate FTC Communications, Inc. (FTCC) now assigned for service to Denmark (2) and Finland (2);

c. lease from AT&T and operate six 64-kbps circuits between Tucherton, NJ and TRTI's New York office;

d. lease from British Telecom International (BTI) six 64-kbps half-circuits between Widemouth, England (TAT-8 cablehead) and Scarborough, England (U.K.-Denmark 4 cablehead);

e. acquire from BTI, on an Indefeasible Right of User (IRU) basis, a one-half interests in six 64-kbps circuits in the U.K.-Denmark 4 cable; and

f. use said facilities to provide TRTI's regularly authorized services between the U.S. and Denmark and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRTI and its correspondent in Denmark, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61 (October 1, 1988).

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] TRTI notes that TRT and FTCC will continue to hold title in their names to the cable facilities utilized by TRTI. They will also retain the right to utilize such cable facilities in the future for the provision of their services should TRTI obtain substitute facilities or no longer require them. However, appropriate accounting entries will be made to transfer to TRTI the expenses and capital cost applicable to the cable facilities utilized by TRTI.

[2] *See* footnote no. 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICAITONS CORPORATION — File No. I-T-C-89-144

Application for authority to acquire and operate facilities for direct service between the U.S. and Iran.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 21, 1989 Released: September 28, 1989

By the Chief, International Facilities Division:

1. The captioned application, filed on July 21, 1989 by MCI Telecommunications Corporation (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended to lease and operate satellite and connecting facilities for the provision of MCI's regularly authorized services between the U.S. and Iran. The application was placed on public notice on July 26, 1989. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Iran by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-144 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 24 voice-grade satellite circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Iran, furnished by MCI's correspondent in Iran;

b. lease from AT&T and operate 24 voice-grade circuits in the Etam, West Virginia earth station;

c. lease and operate 24 voice-grade circuits between the Etam, West Virginia earth station and MCI's West Orange, New Jersey operating center; and

d. use said facilities to provide MCI's regularly authorized services between the U.S. and Iran and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Iran, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61 (October 1, 1987).

7. This order is issues under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order *(see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-413

In the Matter of

Amendment of Section 73.202(b), RM-6764
Table of Allotments,
FM Broadcast Stations.
(Brusly, Louisiana and Woodville,
Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. Livingston Communications, Inc. (petitioner), permittee of Channel 242A at Brusly, Louisiana, has before the Commission for consideration a petition for rule making seeking the substitution of Channel 241C2 for Channel 242A at Brusly. Petitioner also seeks the modification of its construction permit to specify operation on the higher powered channel. In addition, petitioner requests the substitution of Channel 299A for vacant Channel 240A at Woodville, Mississippi, in order to accomplish the Brusly upgrade. Petitioner states its intention to construct the higher powered facilities and provide Brusly with a first wide coverage area FM service.

2. Petitioner specified a site to be used for Channel 241C2 at Brusly located 27 kilometers (16.8 miles) northeast of the city.[1] Our engineering analysis confirms that Channel 241C2 can be allotted to Brusly in compliance with the Commission's minimum distance separation requirements at the restricted site, if the channel substitution is made at Woodville. Channel 299A can be substituted for vacant Channel 240A at Woodville consistent with the minimum distance separation requirements of the Commission's Rules.[2]

3. In accordance with Section 1.420(g) of the Commission's Rules, we shall propose to modify the petitioner's construction permit for Channel 242A at Brusly, Louisiana, to specify operation on Channel 241C2, as requested. Therefore, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Brusly.

4. We believe the public interest would be served by the substitution of Channel 241C2 for Channel 242A at Brusly, Louisiana, since it could provide that community with a first expanded FM broadcast service. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No. Present	Proposed
Brusly, Louisiana	242A	241C2
Woodville, Mississippi	240A	299A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Barry Lambergman, Esquire
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D. C. 20036-2679
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The restricted site coordinates are 30-30-00 and 91-00-00.

[2] The coordinates are 31-06-12 and 91-18-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-414

In the Matter of

Amendment of Section 73.202(b), RM-6923
Table of Allotments,
FM Broadcast Stations.
(Indianola, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Walter Gray Gilbert (petitioner) seeking the substitution of FM Channel 245C3 for 245A at Indianola, Mississippi. Petitioner also requests modification of his construction permit for Channel 245A to specify operation on Channel 245C3.

2. We believe petitioner's proposal warrants consideration. Channel 245C3 can be allotted to Indianola, Mississippi, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 8.6 kilometers (5.3 miles) northwest of the community.[1] The site restriction will prevent a conflict with a proposal to substitute Channel 244C3 for 243A at Oak Grove, Louisiana.[2]

3. In view of the fact that the proposed allotment could provide a wide coverage area station to Indianola, Mississippi, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Indianola, Mississippi	245A, 288A	245C3, 288A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Walter Gray Gilbert
P.O. Box 1475
Clarksville, Mississippi 38614

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the

channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 245C3 are 33-31-41 and 90-39-15.

[2] *See* MM Docket 89-192, 4 FCC Rcd 4904 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-415

In the Matter of

Amendment of Section 73.202(b), RM-6943
Table of Allotments,
FM Broadcast Stations.
(Cleveland, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Carol B. Ingram (petitioner), seeking the substitution of Channel 252C3 for Channel 295A at Cleveland, Mississippi. Petitioner also requests modification of her construction permit for Station WEZU to specify operation on Channel 252C3 in lieu of Channel 295A.[1]

2. We believe petitioner's proposal warrants consideration. Channel 252C3 can be allotted to Cleveland, Mississippi, in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[2] We shall propose to modify the construction permit for Station WEZU, Channel 295A, as requested by the petitioner, to specify operation on Channel 252C3. However, in conformity with Commission rules, should another party express an interest in the Class C3 allotment, the modification could not be implemented unless an additional equivalent channel is also allotted.

3. In order to provide a wide coverage station for the Cleveland, Mississippi area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Cleveland, Mississippi	295A	252C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Carol B. Ingram
WEZU Radio
P.O. Box 73
Batesville, Mississippi 38606

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] In MM Docket 88-472, 4 FCC Rcd 1800 (1989), Channel 295A was substituted for Channel 299A, to accommodate a new allotment at Ackerman, Mississippi.

[2] The coordinates for Channel 252C3 are 90-45-00 and 33-52-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-499

In the Matter of

Amendment of Section 73.202(b), RM-6435
Table of Allotments,
FM Broadcast Stations.
(Lumpkin, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 13, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. Pursuant to the request of William L. Taylor, Jr. (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 6206 (1988), proposing the allotment of Channel 257C2 to Lumpkin, Georgia, as the community's first local FM service. Petitioner filed comments stating his intention to apply for the channel, if allotted. No other comments were received.

2. Channel 257C2 can be allotted to Lumpkin in compliance with the Commission's minimum distance separation requirements with a site restriction of 19 kilometers (18.8 miles) southwest to avoid a short-spacing to Station WAYS, Channel 256C1, Macon, Georgia, and the construction permit of Station WDMG(FM), Channel 258C, Douglas, Georgia.[1]

3. We believe the public interest would be served by allotting Channel 257C2 to Lumpkin, Georgia, since it could provide the community with its first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lumpkin, Georgia	257C2

4. The window period for filing applications will open on **November 14, 1989,** and close on **December 14, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 31-54-30 and West Longitude 84-54-38.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-505

In the Matter of

Amendment of Section 73.202(b), RM-6447
Table of Allotments,
FM Broadcast Stations.
(Fitzgerald, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 13, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. Pursuant to the request of William L. Taylor, Jr. (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 6224 (1988), proposing the allotment of Channel 245A to Fitzgerald, Georgia, as the community's first local FM service. Petitioner filed untimely comments[1] and reply comments restating his intention to apply for the channel, if allotted. Fitzgerald Community Broadcasting Company filed untimely comments.[2]

2. Channel 245A can be allotted to Fitzgerald in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) north to avoid a short-spacing to a proposal in MM Docket No. 88-436, to substitute Channel 244C2 for Channel 244A at Valdosta, Georgia.[3]

3. We believe the public interest would be served by allotting Channel 245A to Fitzgerald, Georgia, since it could provide that community with its first local FM service.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Fitzgerald, Georgia	245A

5. The window period for filing applications will open on **November 14, 1989,** and close on **December 14, 1989.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] In view of the fact that this proceeding is uncontested, we have accepted the comments for the purpose of allowing petitioner to restate his interest in applying for the channel.

[2] Fitzgerald's response was accompanied by a request for its acceptance. Fitzgerald states its sole purpose of filing comments is to express an interest in applying for Channel 245A at Fitzgerald, and its concern that the original petitioner may not have submitted "comments". Based on Fitzgerald's request and the fact that no party would be prejudiced by our action, we will accept and consider Fitzgeralds pleading.

[3] The coordinates for Channel 245A at Fitzgerald are North Latitude 31-49-25 and West Longitude 83-14-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-419

In the Matter of

Amendment of Section 73.202(b), RM-6822
Table of Allotments,
FM Broadcast Stations.
(Bunkie, Louisiana)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. At the request of Owensville Communications Company (petitioner), the Commission has before it for consideration a petition for rule making requesting the substitution of Channel 282C3 for Channel 282A at Bunkie, Louisiana, and the modification of its construction permit to specify operation on the higher class co-channel. The proposal could provide the community with its first expanded FM service. Petitioner states it will promptly construct the improved facilities, if authorized.

2. Channel 282C3 can be allotted to Bunkie in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) north of the city.[1] As requested, we shall propose to modify the construction permit for Channel 282A at Bunkie to specify operation on the higher class co-channel, Channel 282C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Bunkie.

3. In view of the fact that Bunkie, Louisiana, could receive its first wide coverage area FM station the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Bunkie, Louisiana	282A	282C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Francis E. Fletcher, Jr., Esquire
Joseph P. Benkert, Esquire
Gardner, Carton & Douglas
1001 Pennsylvania Ave., N.W.
Suite 750N
Washington, D. C. 20004
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504* and *73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for the site specified by the petitioner are 31-02-56 and 92-08-34.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-252

In the Matter of

Amendment of Section 73.202(b), RM-5099
Table of Allotments,
FM Broadcast Stations.
(Leroy and Urbana, Illinois)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 19, 1989 Released: September 28, 1989

By the Chief, Allocations Branch:

1. By *Notice of Proposed Rule Making and Order to Show Cause* in this proceeding, 51 FR 24412, July 3, 1986, we proposed the substitution of Channel 281B1 for Channel 224A at Leroy, and modification of the license for Station WMLA(FM), Leroy, Illinois, to specify operation on the higher class channel. The *Notice* also proposed the substitution of Channel 300A for Channel 280A at Urbana, Illinois, in order to accommodate the upgrade at Leroy, and modification of the license of Tak Communications, Inc. ("Tak"), for Station WKIO(FM) at Urbana, accordingly. In response to the *Notice*, Tak filed a proposal to substitute Channel 223B1 for Channel 280A at Urbana, Illinois, and modify the license of Station WKIO to specify operation on Channel 223B1. In addition, Bell Mason Communications ("Bell-Mason"), Illini Media Company ("Illini"), and W. Russell Withers, Jr. ("Withers") filed comments. Withers submitted reply comments. Tak and McLean County Broadcasters, Inc. ("MCB")[1] submitted late filed comments.

2. In a separate *Further Notice of Proposed Rule Making and Order to Show Cause* in this proceeding, 2 FCC Rcd 6092 (1987), the Commission sought further comments on Tak's proposal to delete Channel 280A at Urbana and add Channel 223B1 at Urbana, Illinois, and issued an additional *Show Cause Order* permitting Tak to advance any additional arguments as to why Channel 300A should not be allotted to Urbana if the upgrade to Channel 223B1 cannot take place. As stated in the *Further Notice*, modification to Channel 223B1 can be effectuated in the course of this allotment proceeding, provided no other interests are expressed or an additional equivalent channel is available to accommodate other interested parties. Tak filed a petition for reconsideration and rescission, and comments in response to the *Further Notice*. MCB filed supporting comments in response to Tak's petition for reconsideration. MCB also filed a notice of appearance for counsel and a statement of continuing interest. Preferred Radio Partners filed comments and reply comments. Preferred's comments express an interest in applying for Channel 223B1 at Urbana. MCB and Withers filed reply comments in opposition to Tak's comments on the *Further Notice*. After the pleading cycle closed, Tak filed a "Request for Withdrawal" of its Petition for Reconsideration and Partial Withdrawal of its comments, and Preferred filed a "Request for Withdrawal" of its comments and reply comments. MCB and Withers also filed a request for an order terminating this proceeding.

3. In view of the withdrawal of Preferred's expression of interest in applying for channel 223B1 at Urbana, there is no impediment to upgrading Station WKIO(FM) on that channel, or to upgrading Station WMLA(FM) at Leroy.

4. Based on the above information, we believe the public interest would be served by substituting Channel 281B1 for Channel 224A at Leroy, modifying the license of Station WMLA(FM) to specify operation on Channel 281B1, and substituting Channel 223B1 for Channel 280A at Urbana, and modifying the license of Station WKIO(FM) to specify operation on Channel 223B1. Channel 281B1 can be allotted to Leroy, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) northeast of the city.[2] Channel 223B1 can be allotted to Urbana, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) south,[3] in order to avoid a short-spacing to Station WDEK, Channel 223B at Dekalb, Illinois.

5. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Leroy, Illinois	281B1
Urbana, Illinois	223B1, 296A

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of McLean County Broadcasters, Inc., Station WMLA(FM), Leroy, Illinois, IS MODIFIED, to specify operation on Channel 281B1 in lieu of Channel 224A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Tak Communications, Inc., Sta-

tion WKIO(FM), Urbana, Illinois, IS MODIFIED, to specify operation on Channel 223B1 in lieu of Channel 280A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] MCB purchased Station WMLA(FM) formerly Station WTWN(FM) from W. Russell Withers.

[2] The coordinates for Channel 281B1 at Leroy are North Latitude 40-25-10 and West Longitude 88-43-02.

[3] The coordinates for Channel 223B1 at Urbana are North Latitude 40-01-42 and West Longitude 88-10-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166
Phase I

In the Matter of

Investigation of Special Access
Tariffs of Local Exchange Carriers

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 1989; Released: May 9, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By an Order released January 18, 1989, the Bureau directed American Telephone and Telegraph Company (AT&T) and the Bell Operating Companies (BOCs) to file copies of all Shared Network Facilities Agreements (SNFAs) negotiated between AT&T and the BOCs pursuant to the Plan of Reorganization approved by the Court in *United States v. Western Electric Company*, 569 F. Supp. 1057 (D.D.C.) *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983).[1] In addition, the *SNFA Filing Requirements Order* established a schedule for filing supplemental direct cases and other submissions in the captioned proceeding. Finally, the Order solicited comments on the Bureau's conclusion that the filing of all SNFAs is necessary to respond to the mandate of the Court in *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988) (*Remand Order*). [2]

2. In response to the *SNFA Filing Requirements Order*, each of the BOCs and AT&T filed comments. MCI Telecommunications Corporation (MCI), US Sprint, the Ameritech Operating Companies (Ameritech), Pacific Bell, and US West filed reply comments. Many of these pleadings propose alternatives to the requirements established by the *SNFA Filing Requirements Order*. In addition, AT&T filed a petition for reconsideration of the requirement that the so-called "AT&T SNFAs," *i.e.*, those agreements under which AT&T leases facilities to the BOCs, be filed as well as the "BOC SNFAs," which provide for lease of facilities from a BOC to AT&T.

3. We affirm our earlier conclusion that all SNFAs must be filed -- both BOC SNFAs and AT&T SNFAs -- in order to resolve the issues remanded by the Court. In addition, we conclude that public disclosure of the SNFAs is necessary to a full and fair resolution of the issues. Finally, we establish more precise filing requirements than those contained in the *SNFA Filing Requirements Order*.

II. SUMMARY OF PLEADINGS

4. The comments and replies filed in response to the *SNFA Filing Requirements Order* address three main issues: whether all of the SNFAs must be filed; who should be required to file specific information; and whether the SNFAs should be held confidential. We discuss each of these in turn.

A. *Filing of All SNFAs*

5. As we have noted, the *SNFA Filing Requirements Order* requires that all of the SNFAs, as opposed to a sample of the agreements, be filed. Three of the BOCs state in their comments that they are prepared to comply with this requirement. [3] New York Telephone Company and New England Telephone Company (NYNEX) and Southwestern Bell Telephone Company (Southwestern), on the other hand, suggest that only SNFAs that apply to particular types of facilities should be filed.[4] These carriers suggest that only facilities provided under Article 3 and 4 SNFAs "could conceivably be used in the provision of special access service."[5] Both NYNEX and Southwestern argue that SNFAs other than Article 3 and 4 SNFAs are irrelevant because the facilities covered by these leases are not used in the provision of special access service.[6] NYNEX and Southwestern contend that the costs associated with supporting investment are reflected in the SNFA charges for the Article 3 and 4 SNFAs. Thus, for example, although leases of land and buildings are Article 6 SNFAs, the costs associated with the real estate on which Article 3 and 4 SNFA facilities are situated would be included in the charges contained in the Article 3 and 4 schedules.[7]

6. US West states that it is willing to produce copies of all SNFAs in its possession but does not believe that all SNFAs are relevant to the issues before the Commission. US West therefore proposes alternative filing requirements. First, US West argues that the Commission should require the production only of those SNFAs that were in effect concurrently with the April 1, 1985, and October 1, 1985, special access tariffs. US West reasons that the investigation was instituted with respect to the tariffs that took effect on April 1, 1985, and was terminated, as to SNFA issues, by the *SNFA Order*.[8]

7. Alternatively, US West argues that if the Commission considers the nature of the investigation to be prospective only, it should merely require the filing of those SNFAs that are still in effect. US West also suggests that only some types of SNFAs may be required. First, US West contends, only matters falling within SNFA Articles 3 and 4 are needed. On the other hand, US West notes, it could be argued that all SNFAs other than Article 2 and 5 SNFAs are necessary. Finally, US West observes that in the event the Commission finds the special access rates in effect during the relevant period to be discriminatory, the Commission must prescribe a reasonable rate for that period before considering appropriate relief.[9]

8. The Bell Atlantic Telephone Companies (Bell Atlantic) proposes a plan to derive a statistically valid sample of SNFAs from each category. Bell Atlantic asserts that this would provide the Commission with an appropriate record for analysis of the issues while reducing by 70 percent the number of SNFA schedules that would have to be filed.[10] Under Bell Atlantic's plan, separate samples would be drawn from each of the eight SNFA articles.[11] By drawing samples from each sub-universe, Bell Atlantic asserts its sampling plan would meet our concern that the

samples are representative of all SNFAs. Bell Atlantic contends that the implementation of its sampling plan will be relatively simple because each of its SNFA schedules was assigned to the appropriate article at the inception of the SNFA contract. In addition, each SNFA schedule already carries a unique identifying number, making identification and collection of a random sample an uncomplicated process, according to Bell Atlantic.[12]

9. Ameritech states that the Commission is rightly concerned about the massive amount of paper that will be filed in this proceeding if all SNFAs are filed. However, Ameritech asserts that it would be presumptuous to limit the filing to SNFAs associated with certain articles because, it claims, MCI bears the burden of demonstrating that the BOCs' special access rates are discriminatory.[13]

10. In their reply comments, both MCI and US Sprint argue that the *SNFA Filing Requirements Order* correctly concludes that all SNFAs, rather than a sample, must be filed. MCI contends that the fact that three of the BOCs have expressed their willingness to make a complete filing illustrates that this requirement is not unfair or unreasonably burdensome. Further, MCI asserts, the alternatives proposed by the remaining four BOCs are unsatisfactory because they would not ensure that the Commission and interested parties would have access to all data necessary to make a fully informed decision.[14] MCI believes that the alternative proposed by Bell Atlantic would be confusing and cumbersome to administer. MCI also rejects the proposal advanced primarily by NYNEX and Southwestern to file only schedules pertaining to particular SNFA articles. According to MCI, there is no way to be sure that the BOCs' categorization of the SNFAs was not intended to obfuscate the real nature of the agreements.[15]

11. US Sprint also finds the BOCs' proposed alternatives wanting. Aside from the fact that there is no consensus among the BOCs concerning what SNFAs should be filed, US Sprint notes, accepting one of the proposed alternatives would require the Commission to accept on faith the carriers' representations that the facilities covered by excluded SNFAs are not like facilities used to provide tariffed special access service.[16] US Sprint also argues that the BOCs have provided no reason for limiting the filing. First, US Sprint contends, SNFAs cannot be excluded as irrelevant to the pending investigation because the Commission has had no opportunity to examine the SNFAs to determine relevance. US Sprint also notes that neither AT&T nor the BOCs have requested confidential treatment of the BOC SNFAs. Moreover, US Sprint claims that the elimination of duplicative filings by AT&T and the BOCs should keep the volume of the filings manageable. Thus, US Sprint concludes, the burdensomeness of the filing is not a valid reason to withhold disclosure of some SNFAs.[17]

12. The positions of MCI and US Sprint are not identical, however. For example, MCI argues that we need not require the filing of the AT&T SNFAs at this time, but that we should reserve the right to do so at a later date. MCI states that it agrees with AT&T that the submission of the AT&T SNFAs does not appear to be necessary to resolve the issues before the Commission.[18] In contrast, US Sprint contends that the filing of the AT&T SNFAs is necessary. US Sprint states that the Court recognized in remanding this case to the Commission that the charges to AT&T for SNFA facilities would be affected by the charges the BOCs paid to AT&T for the leasing of AT&T facilities.[19]

B. ***Specific Filing Requirements***

13. We noted in the *SNFA Filing Requirements Order* that both AT&T and the relevant BOC should have copies of all SNFAs that they entered into pursuant to the Plan of Reorganization for the Bell System. Clearly, no purpose would be served by requiring both parties to file copies of the same material. We therefore stated that we would leave it to the parties to devise a mutually acceptable arrangement for dividing the cost and effort of furnishing the relevant material.[20]

14. Several parties have proposed methods for accomplishing this. BellSouth suggests that the owner of leased facilities should submit the SNFA pertaining to such facilities. In other words, the BOCs would submit BOC SNFAs and AT&T would submit AT&T SNFAs. In addition, BellSouth notes that because the same Master Contract and Cost Manual pertain to all SNFA schedules, only a single copy is required. BellSouth proposes that AT&T submit these materials but that BellSouth would submit the modifications to the Master Contract that it has negotiated.[21] There is general agreement among the BOCs on this division of labor.[22] In addition, NYNEX notes that the SNFA schedules do not generally show the charges paid for a specific facility. Therefore, NYNEX suggests that AT&T should provide a list of charges for SNFA facilities it leases to the BOCs and the BOCs should provide a similar list for facilities that they lease to AT&T.[23]

15. US Sprint expresses support for the NYNEX proposal. US Sprint states that this method divides filing responsibilities in a fair and equitable manner and does not indicate any concern that it would be subject to abuse.[24] MCI, however, asserts that there is no way to determine whether the Master SNFA and Attachment A are identical unless each BOC is required to file these documents and any revisions to Attachment A.[25] In addition, MCI insists that the BOCs be directed to provide a complete list of charges pertaining to each SNFA schedule as it was originally executed and in its amended form. Finally, in order to determine the amounts that AT&T actually pays for leased facilities, MCI contends that the BOCs must be required to produce copies of billing information, in the form of invoices, for all facilities leased to AT&T pursuant to the SNFAs. Such information, MCI argues, must clearly state the schedule and list of charges to which it corresponds. This information should cover the period from April 1, 1985, to March 31, 1989.[26]

C. ***Confidential Treatment of SNFAs***

16. Several of the BOCs make arguments concerning the effect of Article 1.A.19 of the Master SNFA. Bell Atlantic states that this provision requires each party to obtain the consent of the other in order to provide confidential information to the Commission. Bell Atlantic states that it intends to authorize AT&T to provide SNFA schedules pursuant to which it leases facilities from AT&T and will seek permission from AT&T to file the Bell Atlantic SNFAs.[27]

17. According to Southwestern, this provision requires each party to notify the other of any demand to disclose information under lawful process. In addition, Article 1.A.19 provides that any party may disclose information of the other party when requested by a government agency having jurisdiction over the disclosing party. Southwestern acknowledges that the Commission has jurisdiction over both it and AT&T. Southwestern further

states that the SNFA "provides that the disclosing party should attempt to obtain protective arrangements from the requesting government agency which are satisfactory to the nondisclosing party owning the requested information. . . ."[28]

18. NYNEX asserts that "[i]f confidential information is requested by a government agency, a party to SNFA may disclose it only if satisfactory protective arrangements are obtained."[29] Finally, BellSouth states that the SNFA agreements require it to keep the information contained therein confidential because AT&T considers this information proprietary. Absent a determination by AT&T that it does not seek confidential treatment of the SNFA schedules, BellSouth asserts, the Commission would have to abrogate that portion of the SNFA contract requiring nondisclosure.[30]

19. AT&T also opposes disclosure of the SNFAs, but does not rely on the purported prohibition in the Master SNFA as its justification. Rather, AT&T asserts that disclosure of the information contained in the SNFAs would provide competitors with detailed information concerning the configuration, cost, and usage of its network. AT&T argues that we have consistently withheld such information, including sample SNFAs, from public disclosure and concludes that past findings of competitive harm outweigh our finding in the *SNFA Filing Requirements Order* that the public interest requires disclosure of the SNFAs.[31]

20. MCI, however, argues that the SNFAs are not entitled to confidential treatment. MCI also contends that the BOCs' concerns would be allayed if we were to modify the requirements of the *SNFA Filing Requirements Order* to require the filing of only the BOC SNFAs at this time. Nevertheless, MCI states, if we require the filing of the AT&T SNFAs as well, we should find that the public interest demands full public disclosure of this information.[32] US Sprint likewise notes that no party has argued that confidential treatment of the BOC SNFAs is required.[33] US Sprint also asserts that AT&T has presented no compelling reason to reverse our decision that confidential treatment is not warranted. US Sprint notes that AT&T is a regulated carrier and, as such, is required to provide full cost information. Moreover, US Sprint argues, the information that is likely to be revealed would be of little competitive use.[34]

III. AT&T PETITION FOR RECONSIDERATION

21. As we have noted, AT&T seeks reconsideration of the requirement that all SNFAs – including those pursuant to which AT&T leases facilities to the BOCs – be filed. AT&T contends that this requirement goes far beyond what is mandated by the Court. AT&T asserts that the AT&T SNFAs are irrelevant to this proceeding. The sole purpose of this proceeding as framed by the Court, AT&T argues, is to determine whether the BOCs' special access tariffs are unreasonably discriminatory compared with the amount paid by AT&T under the SNFAs. AT&T also observes that MCI has not requested the production of the AT&T SNFAs.[35]

22. AT&T further asserts that the Bureau's stated justification for requiring the production of the AT&T SNFAs was addressed by the Court and rejected. According to AT&T, the Court found that even if "artificially low BOC SNFA charges to AT&T were offset by correspondingly low AT&T SNFA charges to the BOCs, that fact would not resolve the central issue of this proceeding, namely, whether BOC special access rates are unreasonably discriminatory in comparison to the BOC SNFA charges to AT&T."[36] Moreover, AT&T argues, the burden of requiring the filing of the AT&T SNFAs would be unreasonable in light of the purported irrelevance of the material. AT&T asserts that there are approximately 11,000 AT&T SNFAs, which, together with amendments, comprise approximately 100,000 pages. AT&T maintains that locating, copying, and filing this material would take at least 23,000 work hours and cost approximately $700,000. According to AT&T, the production of lists of the actual amounts paid to AT&T under each SNFA would impose an additional burden.[37]

23. US Sprint opposes AT&T's petition. As an initial matter, US Sprint asserts, the *SNFA Filing Requirements Order* might be considered an interlocutory Order, of which petitions for reconsideration would not lie. On the merits, US Sprint argues that AT&T's petition should be denied. US Sprint appends the arguments contained in its reply comments regarding AT&T's assertion that the AT&T SNFAs should not be filed.[38]

IV. DISCUSSION

24. We remain convinced that the filing of all SNFAs will best enable the Commission to resolve the issues remanded by the Court. It may well be that only SNFA schedules relating to some articles are comparable to special access.[39] As Pacific has noted in its reply comments, however, the structure, content, and administration of SNFA contracts have never been uniform among the BOCs. For example, although some BOCs state that they captured the entire cost of a SNFA facility in the schedule for that facility, Pacific did not. Rather, Pacific states, it generally captured the direct investment in land and buildings associated with an Article 3 or 4 SNFA facility in a separate Article 6 SNFA. We therefore conclude that proposals to limit the filing to only those schedules associated with particular SNFA articles would not be consistent with the Court's directive that we compare the SNFAs to the BOCs' special access tariffs.

25. Moreover, although Bell Atlantic's sampling plan would include SNFAs from each of the articles, it is not clear that the resulting filing would be sufficient to resolve the issues before the Commission. Indeed, rather than assisting the Commission to resolve the issues before it, the proposed sampling plan itself would likely become a further area of contention. MCI argues that the flaws it detects in Bell Atlantic's proposal demonstrate that no sampling plan administered by the holders of the SNFAs can guarantee a truly honest result. Although we have no reason to impugn the motives of Bell Atlantic or any other party to this proceeding, we are concerned that the potential existence of undisclosed SNFAs would cast doubt on the adequacy of the process and the fairness of the result regardless of what conclusion the Commission ultimately reaches. We conclude that in order to resolve the issues raised in this investigation it will be necessary to view the SNFAs in context. This requires that the Commission and interested parties have access to all of the SNFAs. We therefore deny the various proposals to limit the filing of the SNFAs except as indicated below.

26. For the same reason, we deny AT&T's petition for reconsideration. First, we do not agree with AT&T's reading of the Court's discussion of the relevance of the AT&T SNFAs. The Court never found that the AT&T

SNFAs were irrelevant to this proceeding, nor did it direct us to consider only the BOC SNFAs. As mentioned above, AT&T contends that the Court[40] concluded that even if it were true that artificially low BOC SNFA charges to AT&T were offset by correspondingly low AT&T SNFA charges to the BOCs, that fact would not resolve the central issue of this proceeding, namely, whether BOC special access rates are unreasonably discriminatory in comparison to BOC SNFA charges to AT&T.

The Court noted that "it can reasonably be assumed that any detriment that a BOC suffered from unduly low fees paid to it as lessor would tend to be offset by corresponding benefits it received as lessee."[41] We cannot at this stage say what effect the AT&T SNFAs may have on the reasonableness of the BOC special access tariffs, but we think it is clear that the Court recognized the relevance of the AT&T SNFAs. Although it is true that the AT&T SNFAs by themselves will not resolve the issues before the Commission, we continue to believe that they are necessary to a full and fair analysis of the issues. We note also that the Court expressly left to the Commission the task of devising an appropriate investigation.[42] Although the filing of the AT&T SNFAs may involve some burden, we find that the public interest in resolving this investigation outweighs these concerns.[43] We therefore deny AT&T's petition for reconsideration of the *SNFA Filing Requirements Order* to the extent that the Order requires filing of the AT&T SNFAs.

27. We are also unpersuaded by the arguments of AT&T and the BOCs that the SNFAs should be held confidential. First, as MCI has noted, the BOCs have not requested that information that they own be accorded confidential treatment. Permitting public disclosure of such material should therefore not pose a problem. In addition, it is not clear from the comments before us precisely what obligations the Master SNFA imposes on the parties with respect to confidentiality. It is clear, however, that we have ample authority to require disclosure of the SNFAs in order to complete the pending investigation.

28. Perhaps more important, however, disclosure of the SNFAs is fully consonant with the Commission's Rules and the Freedom of Information Act. The materials that we are requiring to be filed will become part of the record of CC Docket No. 85-166; such records are routinely made available for public inspection pursuant to Sections 0.451 and 0.453 of the Commission's Rules, 47 C.F.R. §§ 0.451, 0.453.[44] We find that AT&T has not demonstrated that it is so likely to suffer competitive harm from the disclosure of the SNFAs that confidential treatment is warranted. First, many of the SNFAs have by now expired. We do not believe that AT&T has shown that it is likely to be harmed by the disclosure of agreements that are no longer effective. Further, we find that AT&T has not demonstrated that disclosure of those SNFAs that remain in effect is likely to cause significant competitive harm. Disclosure of the AT&T SNFAs and the charges paid to AT&T thereunder would reveal only limited information about relatively small portions of AT&T's network and services. In view of the necessity of providing a complete record for the resolution of the pending investigation, we find that limited potential for competitive harm posed by disclosure of this information is insufficient to require confidential treatment of the SNFAs.

29. For the reasons set forth above, we conclude that, in order to fulfill the mandate of the Court of Appeals, the following information must be filed, as directed by the *SNFA Filing Requirements Order*. Each BOC shall file a copy of the Master SNFA and Attachment A, the Standard Costing Manual, together with any amendments to either of these documents that it has negotiated with AT&T. In addition, each BOC shall file a copy of all schedules for lease of facilities to AT&T that were in effect between April 1, 1985, the effective date of the special access tariffs, and June 13, 1989, together with a list of charges paid thereunder. AT&T shall file copies of all schedules for lease of facilities to each BOC that were in effect between April 1, 1985, and June 13, 1989, together with a list of charges paid thereunder. Each BOC and AT&T shall indicate the expiration date of any SNFA schedule that is no longer in effect. In addition, each BOC and AT&T shall state the total billings for all schedules under each of the SNFA articles for each of the years 1985, 1986, 1987, and 1988 for each state and for the life of the contracts.

30. We take this opportunity also to elaborate on what we expect AT&T and the BOCs to file in their supplemental direct cases. As we noted in the *SNFA Filing Requirements Order*, we expect these submissions to present the parties' view of the issues remanded to the Commission by the Court.[45] In particular, in order to assist the Commission to analyze these issues, AT&T and the BOCs should include in their direct cases a detailed description and analysis of the features and functions available to users of facilities leased under each of the SNFA articles. This material should be in narrative form but may be supplemented by studies and technical materials. AT&T and the BOCs should describe the technical functions performed by the facilities and the use of these functions in the provision of telecommunications services. In addition, the parties should compare the features and functions available using SNFA facilities with the features and functions available under the BOCs' special access tariffs. AT&T and the BOCs should also explain the extent to which AT&T's opportunity to use the facilities available under the SNFAs has in the past or would in the future increase or decrease either the cost of special access service or the demand for special access services by AT&T or any other user.

31. The BOCs and AT&T are directed to file one copy of this material for the use of the Commission's staff and, because this is a docketed proceeding, two copies for the Commission's Dockets Branch. The BOCs and AT&T shall also file one copy with the Commission's contractor for public records duplication, International Transcription Service, Inc., Room 246, 1919 M St., N.W. Washington, D.C. 20554. The parties are required to file the SNFAs and further pleadings in this investigation in accordance with the schedule established by the *SNFA Filing Requirements Order*.[46]

V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that American Telephone and Telegraph Company and the Bell Operating Companies SHALL FILE all Shared Network Facilities Agreements as required by the terms of this Order not later than June 13, 1989.

33. IT IS FURTHER ORDERED that American Telephone and Telegraph Company and the Bell Operating Companies SHALL FILE supplements to their direct cases in the above-captioned proceeding not later than June 13, 1989.

34. IT IS FURTHER ORDERED that the petition for reconsideration filed by American Telephone and Telegraph Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, 4 FCC Rcd 687 (1989) (*SNFA Filing Requirements Order*).

[2] In that decision, the Court remanded the Commission's *SNFA Order*. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, FCC 86-52, released Jan. 24, 1986 (*SNFA Order*).

[3] The three are the BellSouth Telephone Companies (BellSouth), Pacific Bell and Nevada Bell (Pacific), and the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West).

[4] The SNFAs divide the facilities leased into eight categories as follows: Article 1 -- General Terms and Conditions; Article 2 -- Switching Systems and Equipment Power; Article 3 -- Cable Transmission Facility Capacity; Article 4 -- Central Office Circuit or Carrier Equipment and Radio Transmission Facilities; Article 5 -- Operator Services Work Centers, Systems, and Services; Article 6 -- Land, Land and Buildings, Self-Supporting Towers, and Distributing Frames; Article 7 -- Operations Centers and Support Systems; Article 8 -- Information Network.

[5] NYNEX Comments at 10.

[6] *Id.* at 11-14; Southwestern Comments at 5-11. NYNEX concedes, however, that certain Article 7 SNFAs could be relevant to this investigation because the leased facilities could support Article 3 and 4 facilities. These include circuit provision centers, serving test centers, and trunks integrated recordkeeping system (TIRKS). NYNEX therefore proposes to file any Article 7 stand-alone schedules which may cover facilities used to support Article 3 and 4 facilities. NYNEX Comments at 13-14.

[7] Southwestern Comments at 8 n.10; NYNEX Comments at 11-13. *But cf.* Pacific Comments at 4 (a comparison of SNFA costs to special access rates would require, *inter alia*, examining schedules from every article of the agreement because a lease of transmission and central office facilities may be useless without a lease of the land and other facilities that support them).

[8] US West Comments at 5-6.

[9] US West Comments at 6-8.

[10] Bell Atlantic Comments at 2. Bell Atlantic also contends that the relevant universe for sampling is all SNFAs that were in effect in June 1985 when its special access tariff became effective. SNFAs which expired before this date (and which Bell Atlantic argues could have no bearing on the lawfulness of the special access tariffs) represent approximately 20 percent of the SNFAs that were created at divestiture. *Id.* at n.5.

[11] *Id.* at 4. Bell Atlantic notes that all of its SNFA schedules fall into one of six of the articles. Bell Atlantic states that there are no schedules associated with Article 1, which contains general terms and conditions, and that Bell Atlantic has never had any Article 8 SNFAs. *Id.* at n.9.

[12] *Id.* at 5. Attachment A to Bell Atlantic's comments contains a detailed description of the proposed sampling methodology.

[13] Ameritech Comments at 2-4. Ameritech expresses the view that Bell Atlantic's sampling plan appears unobjectionable and also argues that the AT&T SNFAs are not necessary to the completion of this investigation. AT&T also argues that it should not be required to file SNFAs under which it leases facilities to the BOCs. AT&T's comments raise essentially the same arguments as its petition for reconsideration. Accordingly, we will address its arguments in the section of this Order relating to the petition.

[14] MCI Reply Comments at 3-4.

[15] *Id.* at 4-7.

[16] US Sprint Comments at 3.

[17] *Id.* at 4-5.

[18] MCI Reply Comments at 10.

[19] US Sprint Reply Comments at 6-7 (citing *Remand Order*, 842 F.2d at 1306).

[20] *SNFA Filing Requirements Order*, 4 FCC Rcd at 688 n.4.

[21] BellSouth Comments at 1-2.

[22] NYNEX Comments at 6-7; Southwestern Comments at 4 n.7; Bell Atlantic Comments at 3 n.8; Pacific Comments at 5. NYNEX does not appear to share BellSouth's confidence that the Master SNFA and Standard Costing Manual are identical for each BOC. Therefore, NYNEX proposes that AT&T be required to file a certification to this effect along with a list of the BOCs that are parties to these documents. NYNEX Comments at 6.

[23] NYNEX Comments at 7.

[24] US Sprint Reply Comments at 8-9.

[25] MCI Comments at 7.

[26] *Id.* at 7-9.

[27] Bell Atlantic Comments at 3 n. 8.

[28] Southwestern Comments at 12-13.

[29] NYNEX Comments at 15

[30] BellSouth Comments at 2-3. BellSouth states that an Order to this effect would have to be consistent with the Sierra-Mobile doctrine. FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956); United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956).

[31] AT&T Comments at 5-7.

[32] MCI Reply Comments at 10-11. MCI also states that the Commission clearly has the right to modify or abrogate the confidentiality provision of the SNFAs if it finds this necessary in order to serve the public interest. *Id.* at 11 n.33 (citing *Western Union v. FCC*, 815 F.2d 1495 (D.C. Cir. 1987)).

[33] US Sprint Reply Comments at 4.

[34] *Id.* at 8.

[35] AT&T Petition at 2-3.

[36] *Id.* at 4.

[37] *Id.* at 4-5.

[38] US Sprint Opposition at 2-3. These arguments are summarized at para. 12, *supra*.

[39] It is, of course, also possible that, as several of the BOCs have argued, no facilities leased under the SNFAs are like special access service.

[40] AT&T Petition at 4.

[41] *Remand Order*, 842 F.2d at 1306.

[42] *Id.* at 1307.

[43] Although we are not in a position to determine the effort or expense that will be entailed in filing the AT&T SNFAs, we are surprised by AT&T's estimate of 23,000 person hours and a cost of $700,000.

[44] *See also* 5 U.S.C. § 552.

[45] *SNFA Filing Requirements Order*, 2 FCC Rcd at 688.

[46] In that Order, we directed AT&T and the BOCs to file their supplemental direct cases on June 13, 1989, contemporanous with the filing of the SNFAs. We also established September 13, 1989, and October 13, 1989, as the deadline for filing oppositions to the direct cases and rebuttals, respectively.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Editorial Amendments to Part 90
of the Commission's Rules

ORDER

Adopted: September 20, 1989 Released: September 22, 1989

By the Chief, Private Radio Bureau:

1. This *Order* amends Part 90 of the Commission's Rules, 47 C.F.R. Part 90, governing the Private Land Mobile Radio Services. These rule amendments correct typographical errors and omissions, remove references to superceded rules, and revise wording to clarify the affected sections. Accordingly, the notice and comment provisions of the Administrative Procedures Act are unnecessary. *See* 5 U.S.C. § 553.

2. Because a *Notice of Proposed Rule Making* is not required, the Regulatory Flexibility Act, P.L. 93-354, does not apply.

3. Authority for this action is contained in Sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1), and 303(r), and by Section 0.331(a)(1) of the Commission's Rules, 47 C.F.R. § 0.331(a)(1).

4. In view of the above, IT IS ORDERED that Part 90 IS AMENDED as set forth in the attached Appendix.

5. IT IS FURTHER ORDERED that, because these amendments are non-substantive, this *Order* is effective immediately upon adoption. *See* 5 U.S.C. § 553(d).

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

APPENDIX

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.25(f)(2) is amended by changing "(A9 or F9 emission)" to "(A1D, A2D, F1D, or F2D emission)".

3. Section 90.63(c) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(c) * * *

Power Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	17
* * * * *		
935 to 940	Base or mobile	17
* * * * *		

4. Section 90.65(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.65 Petroleum Radio Service

* * * * *

(b) * * *

Petroleum Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	30
* * * * *		
935 to 940	Base or mobile	30
* * * * *		

5. Section 90.67(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.67 Forest Products Radio Service

* * * * *

(b) * * *

Forest Products Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	20
* * * * *		
935 to 940	Base or mobile	20

* * * * *

6. Section 90.69(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(b) * * *

Motion Picture Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	5
* * * * *		
935 to 940	Base or mobile	5

* * * * *

7. Section 90.71(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

Relay Press Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	3
* * * * *		
935 to 940	Base or mobile	3

* * * * *

8. Section 90.73(c) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

Special Industrial Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	21
* * * * *		
935 to 940	Base or mobile	21

* * * * *

9. Section 90.75(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

Business Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	33
* * * * *		
935 to 940	Base or mobile	33

* * * * *

10. Section 90.79(c) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

Manufacturers Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	15
* * * * *		
935 to 940	Base or mobile	15

* * * * *

11. Section 90.81(c) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

Telephone Maintenance Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	7
* * * * *		
935 to 940	Base or mobile	7

* * * * *

12. Section 90.89(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

Motor Carrier Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	12
* * * * *		
935 to 940	Base or mobile	12

* * * * *

13. Section 90.91(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

Railroad Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
* * * * *		
896 to 901	Mobile	13
* * * * *		
935 to 940	Base or mobile	13

* * * * *

14. Section 90.93(b) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

Taxicab Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
	* * * * *	
896 to 901	Mobile	5
	* * * * *	
935 to 940	Base or mobile	5
	* * * * *	

15. Section 90.95(c) is amended by adding the frequency bands 896-901 MHz and 935-940 MHz to the Frequency Table under MHz numerically to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

Automobile Emergency Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
	* * * * *	
896 to 901	Mobile	10
	* * * * *	
935 to 940	Base or mobile	10
	* * * * *	

16. Sections 90.63(d)(17), 90.65(c)(30), 90.67(c)(20), 90.69(c)(5), 90.71(c)(3), 90.73(d)(21), 90.75(c)(33), 90.79(d)(15), 90.81(d)(7), 90.89(c)(12), 90.91(c)(13), 90.93(c)(5), and 90.95(d)(10) are revised to to read as follows: "Subpart S contains rules for assignment of frequencies in the 806-821/851-866 and 896-901/935-940 MHz bands."

17. Section 90.63(d)(5) is amended by changing the word "petroleum" to "Petroleum".

18. Section 90.69(b) is amended by adding an asterisk to the frequency band 10,550 to 10,680 MHz in the Motion Picture Radio Service Frequency Table and the following footnote immediately below the Table. " * The frequencies in the band 10.55-10.68 GHz are available for Digital Termination Systems and for associated internodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed."

19. Section 90.79(d)(11) is amended by removing the extra phrase "in this service".

20. Section 90.81(d)(4) is amended by changing the word "assigns" in the fourth sentence to "assignees".

21. Section 90.85 is amended by changing, in the first sentence, the words "motor carrier" to "Motor Carrier".

22. Section 90.95(c) is amended by adding an asterisk to the frequency band 10,550 to 10,680 MHz in the Automobile Emergency Radio Service Frequency Table and the following footnote immediately below the Table. " * The frequencies in the band 10.55-10.68 GHz are available for Digital Termination Systems and for associated internodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed."

23. Section 90.103(c)(22) is amended by changing "(AO)" to "(NON)" and ".2 percent" to "0.2 percent".

24. Sections 90.103(c)(23) and (c)(24) are amended by removing the words "Subpart F of".

25. Section 90.119(b) is amended by changing the beginning of the sentence to read as follows: "With respect to the 806-824/851-869 and 896-901/935-940 MHz bands, all applications * * * .

26. Section 90.127(a)(1) is amended by adding the word "the" prior to "Federal Communications Commission, Gettysburg, PA 17326."

27. Section 90.127(c)(4) is amended by changing the words "806-821 and 851-866" to read " 806-824/851-869 and 896-901/935-940"

28. Section 90.173(i) is amended by adding the word "being" before "5.26 MHz." in the third sentence.

29. Section 90.175(f)(7) is removed and reserved.

30. Section 90.176(b) is amended by removing the words "(except for the Radiolocation Service)".

31. Section 90.177(c) is amended by revising the right column heading in the Table to read as follows: "Power flux density[1] (dBW per square meter) in authorized bandwidth of service."

32. Section 90.242(a) is amended by changing the beginning of the text to read as follows: "The frequencies 530 and 1610 kHz may be assigned * * * ."

33. Section 90.243(b)(1) is amended by changing the words "Medical Services" to "medical service".

34. Section 90.251 is revised to read as follows: "This subpart sets forth special requirements applicable to the use of certain frequencies or frequency bands."

35. Section 90.271(b)(4) is amended by changing the words "mobile for control" to "mobile or control".

36. Section 90.405(b) is amended by changing the words "in the 470-512 MHz or 800 MHz frequency band." to "above 470 MHz under this part."

37. Section 90.425(c)(2) is amended by changing the words "radiolocation service" to "Radiolocation Service".

38. Section 90.463(a) is amended by removing the word "himself" in the third sentence.

39. Section 90.465(a) is amended by changing "SF" in the second sentence with "single frequency".

40. Section 90.555 is amended by removing the following frequencies (including Services and Special Limitations) the first time they appear: 173.20375, 173.2100, 173.225, 173.250, 173.275, 173.300, 173.325, 173.350, and 173.375, and also removing the first 173.375 that follows 173.3625.

41. In Section 90.613, the Table of 806-824/851-869 MHz Channel Designations is amended by changing Channel 829 from ".9725" to ".9750".

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-421

In the Matter of

Amendment of Section 73.202(b), RM-6853
Table of Allotments,
FM Broadcast Stations.
(Idalou, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Express Communications (petitioner), seeking the allotment of Channel 289A to Idalou, Texas, as that community's first local FM service. Petitioner states an intention to apply for the channel, if allotted. Channel 289A can be allotted to Idalou in compliance with the Commission's minimum distance separation requirements.[1]

2. In view of the fact that Idalou could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Idalou, Texas	---	289A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

David Honig, Esquire
1800 N.W. 187th Street
Miami, FL 33056
(Counsel for petitioner)

5. IT IS ORDERED, That the Secretary of the Commission SHALL SEND A COPY of this *Notice* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED to the following: Barton Broadcasting Company, 4319 57th Street, Lubbock, TX 79413.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the

channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The city reference coordinates are 33-39-48 and 101-40-42. We note that the proposal is short-spaced to Station KEJS(FM) at Lubbock, Texas, Channel 292A. Although a site restriction of 7.9 kilometers (4.9 miles) east of the city, at coordinates 33-41-23 and 101-35-58, would provide protection to Channel 292A at Lubbock, such protection is not necessary in view of the fact that, effective December 5, 1988, Station KEJS(FM) was authorized to modify its facilities to Channel 293C2 in lieu of Channel 292A. *Lubbock, Texas,* 53 FR 43440, October 27, 1988. However, we will serve Station KEJS(FM) with a copy of this proposal.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-422

In the Matter of

Amendment of Section 73.202(b), RM-6867
Table of Allotments,
FM Broadcast Stations.
(Mary Esther, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Holladay Broadcasting Company, Inc. (petitioner), requesting the substitution of Channel 288C3 for Channel 288A at Mary Esther, Florida, and modification of its licensee for Station WYZB(FM) to specify the higher powered channel. Petitioner states its intention to apply for the channel, if allotted.

2. Channel 288C3 can be allotted to Mary Esther in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction of 19.8 kilometers (12.3 miles) east.

3. As requested, we shall propose to modify petitioner's license for Station WYZB(FM) to specify operation on Channel 288C3 in lieu of Channel 288A. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by interested parties.

4. We believe the public interest would be served by proposing the substitution of Channel 288C3 for Channel 288A at Mary Esther, Florida, since it could provide a wide coverage area for Station WYZB(FM). Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Mary Esther, Florida	288A	288C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Bruce A. Eisen
Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-423

In the Matter of

Amendment of Section 73.202(b),	RM-6878
Table of Allotments,	
FM Broadcast Stations.	
(Riviera Beach, Florida)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. Lappin Communications-Florida, Inc. (petitioner), licensee of Station WMXQ(FM), Riviera Beach, Florida, has filed a petition for rule making requesting the substitution of Channel 232C3 for Channel 232A at Riviera Beach, Florida, and modification its license for Station WMXQ(FM) to specify the higher powered channel. Petitioner states its intention to apply for the channel, if allotted.

2. Channel 232C3 can be allotted to Riviera Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north,[1] in order to avoid a short-spacing to Station, WCVU(FM), Channel 233C, Naples, Florida.

3. As requested, we shall also propose to modify the license of Station WMXQ(FM) to specify operation on Channel 232C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the higher powered channel at Riviera Beach or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

4. In view of the fact that Riviera Beach could receive its first wide coverage area FM service the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Riviera Beach, Florida	232A	232C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Allan G. Moskowitz
Kay, Scholer, Fierman, Hays & Handler
901 15th Street, N.W.
Washington, D.C. 20005
(Attorney for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 26-54-21 and West Longitude 80-03-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-424

In the Matter of

Amendment of Section 73.202(b), RM-6868
Table of Allotments,
FM Broadcast Stations.
(Holmes Beach, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. 98.7 Partnership (petitioner), permittee of a new FM station at Holmes Beach, Florida has filed a petition for rule making seeking the substitution of Channel 254C3 for Channel 254A and modification of its construction permit to specify the higher class channel. Petitioner states it will apply for the channel, if allotted.

2. A staff engineering analysis confirms that Channel 254C3 can be substituted for Channel 254A at Holmes Beach, in compliance with minimum distance separation requirements of the Commission's Rules with a site restriction of 16.3 kilometers (10.1 miles) north.[1] The site restriction is necessary to avoid a short-spacing to Station WKTK(FM), Channel 253C, Crystal River, Florida, and Station WKGR(FM), Channel 254C, Fort Pierce, Florida.

3. As requested, we shall propose to modify the construction permit (BPH-861208MW) at Holmes Beach, Florida, to specify operation on Channel 254C3 in lieu of Channel 254A in accordance with Section 1.420(g) of the Commission's Rules. We shall not accept competing expressions of interest nor require the petitioner demonstrate the availability of an additional equivalent channel at Holmes Beach.

4. In view of the fact that Holmes Beach could receive a wide coverage area FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Holmes Beach, Florida	254A	254C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Charles R. Naftalin
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Attorney for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 27-39-39 and West Longitude 82-42-34.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-425

In the Matter of

Amendment of Section 73.202(b), RM-6829
Table of Allotments,
FM Broadcast Stations.
(Rome, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. Briar Creek Broadcasting Corp. (petitioner), licensee of Station WKCX(FM), Channel 249A, Rome, Georgia, has filed a petition for rule making seeking the substitution of Channel 249C3 for Channel 249A, and modification of its license to specify operation on the higher class channel. Petitioner states its intention to apply for the channel, if allotted.

2. Channel 249C3 can be allotted to Rome, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) northeast to avoid a short-spacing to Station WKLD, Channel 249A, Oneonta, Alabama.[1]

3. As requested, we shall propose to modify petitioners license for Station WKCX to specify operation on Channel 249C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the higher powered channel at Rome or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by interested parties.

4. In view of the fact that Rome could receive its first wide coverage area FM service the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Rome, Georgia	249A	249C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Briar Creek Broadcasting Corp.
P.O. Box 1546
Rome, Georgia 30161

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 34-20-00 and West Longitude 85-03-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-426

In the Matter of

Amendment of Section 73.202(b), RM-6776
Table of Allotments,
FM Broadcast Stations.
(Sylvania, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Sam/Mac Broadcasting System, Inc. (petitioner), requesting the allotment of Channel 293A to Sylvania, Georgia, as that community's first local FM service. Petitioner states its intention to apply for the channel, if allotted.

2. A staff engineering analysis has determined that Channel 293A can be allotted to Sylvania in compliance with the Commission's minimum distance separation requirement.[1]

3. In view of the fact that Baxley, Georgia, could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Sylvania, Georgia	--	293A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Shula Mahaffer
President, Sam/Mac Broadcasting
System, Inc.
P. O. Box 519
Sylvania, Georgia 30467

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 32-44-54 and West Longitude 81-37-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-284

In the Matter of

Amendment of Section 73.202(b),	RM-6138
Table of Allotments,	*RM-6474*
FM Broadcast Stations.	RM-6489
(Angola, Berne, Decatur, Lagrange and Roanoke, Indiana; and Brooklyn and *Hudson, Michigan*[1])	

FIRST REPORT AND ORDER

Adopted: September 6, 1989; Released: September 29, 1989

By the Chief, Allocations Branch:

1. The *Notice of Proposed Rule Making* in this proceeding, 3 FCC Rcd 4031 (1988), issued in response to a petition filed on behalf of Lake Cities Broadcasting Corporation ("LCBC") (RM-6138), licensee of Station WLKI-FM, Channel 261A, Angola, Indiana, proposed to substitute Channel 287B1 for Channel 261A at Angola and to modify LCBC's license accordingly. Additionally, in order to accommodate the proposal, LCBC proposed Channel 262A as a substitute for Channel 288A at Lagrange, Indiana,[2] and Channel 225A for Channel 287A at Brooklyn, Michigan.[3] LCBC filed supporting comments.[4] Randall Bhirdo ("Bhirdo") filed a counterproposal (RM-6474),[5] seeking the allotment of Channel 225A to Hudson, Michigan, in lieu of LCBC's proposed substitution for Channel 287A at Brooklyn, Michigan. Midwest Communications Company ("MCC"), licensee of Station WQTZ(FM), Channel 224A, Decatur, Indiana, also filed a counterproposal[6] (RM-6489), seeking the substitution of Channel 286B1 for Channel 224A and modification of its license accordingly. Cascades Broadcasting, Inc. ("CBI"), an applicant for Channel 287A at Brooklyn, Michigan, filed reply comments in support of Bhirdo's counterproposal.

2. We will defer action on the Angola and Decatur proposals pending further consideration of an application for review of the *Memorandum Opinion and Order* in MM Docket No. 86-359, 4 FCC Rcd 5045 (1989), as requested by Huntington Broadcasting Corporation,[7] since it could impact on the proposals. In addition, the Decatur proposal is the subject of a separate *Order* in this proceeding. Additionally, we have not received Canadian concurrence with the revised Angola proposal for Channel 262A. As a result of the cited circumstances, we cannot proceed with those aspects of the proceeding at this time. Rather, they will be addressed in a *Second Report and Order*. However, in the interest of providing service at Hudson, we are addressing Bhirdo's proposal now, since it is not in conflict with any other proposal in this proceeding, as explained *infra*.

3. Although Bhirdo counterproposed the allotment of Channel 225A to Hudson, Michigan, a staff engineering study has determined that Channel 273A can be allotted to that community consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is sited at least 6.5 kilometers (4.0 miles) west[8] of the community to avoid short-spacing to Station WPOS-FM, Channel 272A, Holland, Ohio,[9] and Station WIQB(FM), Channel 275B, Ann Arbor, Michigan.[10] Based on the availability of the alternate channel for allotment to Hudson, we believe there is no justifiable reason to delay the initiation of a first local service to that community,[11] pending resolution of the proposals at Angola and Decatur, Indiana.

4. Since Hudson is located within 320 kilometers (200 miles) of the U.S.-Canada border, Canadian concurrence in the proposal was obtained.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 13, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Hudson, Michigan	273A

6. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 249A at Hudson, Michigan, as follows:

John M. Salov
1758 Maunta Lane
Jackson, MI 49201

7. Pursuant to Section 73.3564(d)(5) of the Commission's Rules, the window period for filing applications on Channel 273A at Hudson, Michigan, will open on **November 14, 1989,** and close on **December 14, 1989.**

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Berne, Decatur, and Roanoke, Indiana, as well as Hudson, Michigan, have been added to the caption.

[2] Channel 288A at Lagrange is presently vacant and unapplied for.

[3] Four applications are presently pending for Channel 287A at Brooklyn, as indicated in the *Notice*.

[4] LCBC subsequently withdrew its modification proposal for Channel 287B1 and has requested consideration of Channel 262A at Angola instead.

[5] Bhirdo's counterproposal was placed on Public Notice August 22, 1988, Report No. 1745.

[6] MCC's counterproposal was placed on Public Notice September 9, 1988, Report No. 1747.

[7] Huntington Broadcasting Corporation is the licensee of Station WIOE(FM), Channel 276A, Huntington, Indiana.

[8] Coordinates for Channel 273A at Hudson are 41-50-09 and 84-25-39.

[9] Coordinates at the licensed site of Station WPOS-FM are 41-37-32 and 83-42-41.

[10] Coordinates at the licensed site of Station WIQB(FM) are 42-15-04 and 83-48-28.

[11] Although Channel 249A is presently allotted to Hudson at coordinates 41-49-00 and 84-14-30, it is technically defective. First, it is shortspaced to the licensed site of Station WDFM(FM), Channel 251B, Defiance, Ohio, at coordinates 41-17-28 and 84-32-17. Consequently, Channel 249A is unavailable at Hudson and will be deleted. By our remedial action, a technically feasible allotment will be made available as a substitute for Channel 249A, to provide Hudson with its first local broadcast service. Although an application has been received for Channel 249A at Hudson (File No. 890118MD), at coordinates 41-53-06 and 84-18-57, we note that it is short-spaced to Station WJIM-FM, Channel 248B, Lansing, Michigan, at coordinates 42-44-22 and 84-30-49, as well as to WJIM's construction permit at coordinates 42-44-23 and 84-30-43. Furthermore, we note that it appears from pleadings filed in connection with that application that the applicant filed its application with full knowledge that, on the date the application was filed, there was no authorized filing window for the allotment. *See* 47 CFR Section 73.3564. Accordingly, the pendency of the application is given no weight in our determination.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Puerto Rico Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 7-1701

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 1989;Released: September 29, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In the *Joint Cost Order*,[1] the Commission required certain subject carriers, including Puerto Rico Telephone Company (PRTC), to file a manual for separating costs of regulated telecommunications services from the costs of nonregulated activities. In response to this requirement, PRTC filed a cost allocation manual on August 24, 1987. This manual described PRTC's nonregulated activities, listed the activities PRTC proposed to treat as incidental activities, and provided information on PRTC's affiliate transactions, employee time reporting procedures, and cost apportionment methods.

2. We reviewed the manual in the *PRTC Order*[2] and found that certain areas of the manual required clarification or revision. Despite these problem areas, we conditionally approved PRTC's manual. We determined that the manual provided adequate assurances against the misallocation of costs and revenues between regulated and nonregulated activities to permit its implementation on January 1, 1988. We required, however, that PRTC submit revisions addressing each of the specified problem areas. We stated that these revisions would be subject to public comment and our review, and that we would take all appropriate action, including the prescription of specific apportionment procedures, in the event we disapproved any part of the further revised manual.[3]

3. PRTC submitted revisions, which provide additional information regarding the majority of the problem areas identified in the *PRTC Order*, on February 21, 1989. Preceding this submission, on January 30, 1989, PRTC submitted a Petition For Partial Reconsideration of the *PRTC Order*, urging the Bureau to reconsider the requirement that PRTC list and describe in its manual all transactions PRTC has with the various branches and agencies of the Puerto Rican government.[4] On May 31, 1989, the Bureau issued an *Order* [5] denying PRTC's petition, and PRTC submitted further revisions on June 15, 1989. According to PRTC, these revisions comply fully with the *PRTC Order*.[6] No party commented on either of these revisions.

II. DISCUSSION

Overall Sufficiency of the Manual

4. Under the *Joint Cost Order*, each cost allocation manual must describe the nonregulated activities, incidental activities, affiliate transactions, employee time reporting procedures and cost apportionment methods of the telephone operating companies that will apply it. In the *PRTC Order*, we required PRTC to provide additional, and in certain instances, corrected information regarding each of these areas. In its revised manual, PRTC provides additional information regarding these areas. After reviewing the contents of PRTC's revised manual, we find, subject to some exceptions discussed below, that it is consistent with the Commission's requirements for cost allocation manuals and properly implements the *PRTC Order*. Accordingly, we approve PRTC's February 21, 1989 and June 15, 1989 revisions, subject to the filing of additional information and revisions specified herein.

Account 1150 - Working Cash Advances

5. PRTC indicates that the division of regulated/nonregulated activities will be based on the apportionment of the total employee salaries and wages less plant specific wages. In the Comments section for this account, PRTC states, "[t]otal Employee Salaries and Wages analysis does not consider those accounts for which there is not a direct and/or indirect apportionment basis. It includes, however, Common Corporate Operation accounts, which will be distributed based on the regulated and nonregulated apportionment of Plant Specific, Nonspecific and Customer Operation functions."[7] We find this comment confusing since PRTC has listed the accounts which are not included in the definition of total employee salaries and wages rather than enumerating the accounts which are part of the analysis. Consequently, we require PRTC to list those accounts which are included in its Total Employee Salaries and Wages analysis. In addition, we require that PRTC list the accounts which it defines as "Common" Corporate Operation because the Part 32 rules do not use the term "Common."[8]

Accounts 5000 through 5280 - Revenue Accounts

6. For Revenue Accounts 5000 through 5270 PRTC directly assigns regulated revenues to a 5000 account and directly assigns nonregulated revenues to Account 7991. In the *Further Order on Reconsideration*, the Commission required the carriers to use Account 5280, Nonregulated revenue[9] to record the nonregulated revenues derived from activities which share assets or revenues with regulated activities. Therefore, we require PRTC to delete Account 7991 from its manual and list Account 5280 in its further revisions, and indicate that these revenues will be assigned to nonregulated activities.

Account 5301 - Uncollectible Revenues - Telecommunications and Account 5302 - Uncollectible Revenues - Other

7. PRTC proposes to directly assign all uncollectible revenues associated with regulated activities to Accounts 5301 and 5302 and directly assign all uncollectible revenues associated with nonregulated activities to Account 7991. As stated in the aforementioned paragraph, Account 7991 should be deleted from the manual. In addition, we are uncertain as to the relationship between PRTC's booked uncollectibles and its mix of regulated and

nonregulated services, and how it can directly assign uncollectibles to these accounts. We, therefore, require PRTC to either clarify how it can directly assign uncollectible revenues to regulated or nonregulated activities or revise its manual to apportion its uncollectible revenues from its telecommunications operation in proportion to its relative telecommunications revenues and its other uncollectible revenues in proportion to its relative non-telecommunications revenues.

Account 6722 - External Relations

8. In the *PRTC Order*, we required PRTC to amend its manual to apportion some of the expenses in its "Rates and Regulations" and "Government Affairs" cost pools to nonregulated activities to reflect its contact with regulatory authorities concerning nonregulated activities. PRTC revised its manual by deleting the direct assignment of these cost pools to regulated activities and substituting the general allocator as the new apportionment basis. PRTC has not explained why, and we are not convinced that, the general allocator is more appropriate than direct assignment to apportion the expenses between regulated and nonregulated activities for these cost pools. Therefore, we require that PRTC either employ direct assignments to allocate the costs in these two cost pools to regulated and nonregulated activities, or explain why the general allocator is the most appropriate method for apportioning these two cost pools.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), that the February 21, 1989 and June 15, 1989 revisions to PRTC's Cost Allocation Manual ARE APPROVED, subject to the conditions stated in this Order.

10. IT IS FURTHER ORDERED that the revisions required herein shall be submitted no later than October 31, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on reconsideration*, 2 FCC Rcd 6283 (1987) (*Order on Reconsideration*), *modified on further reconsideration*, 3 FCC Rcd 6701 (1988) (*Further Order on Reconsideration*), *petition for review pending*, Southwestern Bell Corp. v. FCC, D.C. Circuit No. 87-1764 (filed December 14, 1987).

[2] Puerto Rico Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 7321 (Com. Car. Bureau 1988) (*PRTC Order*).

[3] *Id.* at 7321, paras. 2-3; *id.* at 7324, paras. 32-33.

[4] PRTC filed two motions requesting an extension of time to submit the required information until the Petition For Partial Reconsideration was resolved. These motions were granted, and PRTC was given an extension of time until 15 days after the release of an Order resolving this petition.

[5] Puerto Rico Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 4 FCC Rcd 4569 (Com. Car. Bureau 1989) *(Order)*.

[6] PRTC Manual, Cover Letters, dated February 21, 1989 and June 15, 1989.

[7] PRTC Revised Manual at Section VIII-1. This definition is also referred to in Accounts 1220, 2121, 2123, 2124, 4120, 6121, 6711, 6712, 6721, 6723, and 6726.

[8] We note that the footnote at the bottom of page VIII-31 has been referenced for all accounts which use the definition of total wages and salaries contained in Account 1150. Although there is an asterisk at the end of the footnote, there is no similar asterisk contained in any of the accounts found on this page. We believe that this reference is associated with Account 6723. Consequently, PRTC should correct this omission.

[9] *Further Order on Reconsideration*, 3 FCC Rcd at 6702, para 12.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

Petition for Expedited Waiver
of Section 69.307 of the
Commission's Rules

ORDER

Adopted: September 20, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

1. On May 9, 1989, the National Exchange Carrier Association (NECA) filed a petition for expedited waiver of Section 69.307 of the Commission's Access Charge Rules which prescribes the procedures for allocation of General Support Facilities investment (GSF) among the access elements. On May 17, 1989, the Commission invited comments on NECA's petition. Comments were filed on June 1, 1989, and replies were filed on June 12, 1989.

2. On September 12, 1989, NECA filed a letter with the Commission withdrawing its petition. Accordingly, this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-420

In the Matter of

Amendment of Section 73.202(b),	RM-6845
Table of Allotments,	
FM Broadcast Stations.	
(Brockport, New York)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 11, 1989 Released: September 29, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by John Rosenkrans (petitioner) requesting the allotment of Channel 288A to Brockport, New York, as the community's first local commercial FM service. Petitioner states that it will apply for Channel 288A, if allotted.

2. Channel 288A can be allotted to Brockport in compliance with the Commission's minimum distance separation requirements to all domestic allotments and assignments without the imposition of a site restriction.[1] Brockport is located within 320 kilometers (200 miles) of the U.S.-Canadian border and thus requires concurrence by the Canadian Government. Petitioner notes that the allotment would be short-spaced to Station CHRE, Channel 289B, at St. Catherines, Ontario. However, we have confirmed his showing that any interference resulting from the short-spacing appears to occur on the United States side of the border. Therefore, we will seek Canadian concurrence for a specially negotiated short-spaced allotment.

3. Based on the above information, we believe the public interest would be served by proposing the allotment of Channel 288A to Brockport, New York, since an interest has been expressed in providing the community with its first local commercial FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Brockport, New York	--	288B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 20, 1989,** and reply comments on or before **December 5, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Anne Thomas Paxson, Esq.
Bechtel, Borsari, Cole & Paxson
2101 L Street, N.W., Suite 502
Washington, D.C. 20037
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 43-12-48 and West Longitude 77-56-24.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-436

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Chester and Shingletown, California) RM-6784

NOTICE OF PROPOSED RULE MAKING

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Michael Robert Birdsill (petitioner), permittee of Station KRKQ(FM), Channel 287C2, Chester, California, to amend the FM Table of Allotments by changing the community of license of Channel 287C2 from Chester to Shingletown, California, and modifying his permit accordingly.

2. Petitioner premises his proposal on an alleged inability to secure an appropriate transmitter site at Chester. In this regard, petitioner states that subsequent to the grant of a construction permit for Channel 287C2 at Chester (BPH-870320), he was notified by the United States Forest Service ("USFS") that a special use permit for an established electronic site on Dyer Mountain, located in the Lassen National Forest ("LNF"), would not be issued for the construction of an FM station, based on the objections of existing land mobile, TV and FM translator interests presently operating there. Petitioner advises that since being notified of the USFS determination, he has searched for other possible locations near Chester. However, petitioner claims that his attempts have been unsuccessful as other sites are either undeveloped or pose major questions involving environmental impact.

3. In view of the above, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules.[1] In this regard, petitioner asserts that the proposed move to Shingletown is mutually exclusive with the present allotment of Channel 287C2 at Chester, since the distance between the two reference points is less than the 190 kilometers (118 miles) required by Section 73.207(b) of the Commission's Rules between co-channel Class C2 stations.[2] Moreover, petitioner states that his proposal could provide a first local broadcast service to Shingletown, and would not deprive Chester of local service.[3]

4. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. Shingletown is not listed in the 1980 U.S. Census.[4] Therefore, petitioner should present the Commission with sufficient information to demonstrate that Shingletown has the social, economic or cultural indicia to qualify it as a "community" for allotment purposes. *See Ansley, Alabama*, 46 FR 58688 (1981); *Cascade Village, Colorado*, 48 FR 19917 (1983); *Elwood, California*, 50 FR 13031 (1985).

5. A staff engineering analysis reveals that Channel 287C2 can be allotted to Shingletown in conformity with the Commission's rules and regulations.[5]

6. In consideration of the above, we believe it is appropriate to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Chester, California	255C, 287C2	255C
Shingletown, California	–	287C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Michael Robert Birdsill
P.O. Box 1921
Chico, CA 95927

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] *See Report and Order,* MM Docket No. 88-526, 54 FR 26199, (June 22, 1989); *recon. pend.*

[2] Coordinates used by petitioner for Shingletown are 40-30-00 and 121-53-50, while those used for Chester are 40-18-42 and 121-13-42. The distance between those two reference points is 60.5 kilometers (37.6 miles).

[3] Station KCMT(FM), Channel 255C, is presently licensed to Chester.

[4] We note, however, that Shingletown, California, is listed in the Rand McNally Commercial Atlas as having a population of 450. It also indicates that Shingletown has a post office and a zip code.

[5] Coordinates used in this determination are 40-29-36 and 121-53-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-437

In the Matter of

Amendment of Section 73.202(b), RM-6803
Table of Allotments,
FM Broadcast Stations.
(Jackson, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Radio Station WHOD, Inc., (petitioner), licensee of Station WHOD(FM), Jackson, Alabama, seeking the substitution of Channel 233C3 for Channel 233A[1] and modification of its license accordingly, to specify the higher power channel.

2. A staff engineering analysis of the proposal reveals that Channel 233C3 can be allotted to Jackson at the petitioner's present site[2] in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. We believe the proposal warrants consideration. Therefore, we shall propose to substitute Channel 233C3 for Channel 233A at Jackson, Alabama. As requested, we also propose to modify the Class A license of Station WHOD(FM) to specify operation on Channel 233C3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 233C3 at Jackson.

4. Accordingly, in order to provide Jackson with its first expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Jackson, Alabama	233A	233C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Bennie E. Hewett
President, Radio Station WHOD, Inc.
P.O. Box 518
Jackson, AL 36545

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Although petitioner is presently operating on Channel 285A, it was ordered to relocate to Channel 233A to accommodate the modification of Station WKKY(FM), Moss Point, Mississippi. *See* 4 FCC Rcd 1185 (1989).

[2] Coordinates at the petitioner's present site are 31-32-38 and 87-52-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-438

In the Matter of

Amendment of Section 73.202(b), RM-6804
Table of Allotments,
FM Broadcast Stations.
(Citronelle, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Fuller Broadcasting Company of Mobile County, Inc. (petitioner), permittee of Station WKQR(FM), Channel 270A, Citronelle, Alabama, seeking the substitution of Channel 271C3 for Channel 270A and modification of its permit accordingly, to specify the higher power channel.

2. A staff engineering analysis of the proposal reveals that Channel 271C3 can be allotted to Citronelle at the petitioner's suggested site 13.6 kilometers (8.5 miles) west[1] of the community, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. We believe the proposal warrants consideration. Therefore, we shall propose to substitute Channel 271C3 for Channel 270A at Citronelle, Alabama. As requested, we also propose to modify the Class A permit of Station WKQR(FM) to specify operation on Channel 271C3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 271C3 at Citronelle.

4. Accordingly, in order to provide Citronelle with its first expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Citronelle, Alabama	270A	271C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

M. Scott Johnson, Esq.
Catherine M. Grofer, Esq.,
Gardner, Carton & Douglas
1000 Penn. Ave., NW
Suite 750-N
Washington, DC 20004

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates at the petitioner's suggested site for Channel 271C3 at Citronelle are 31-06-08 and 88-22-28.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-439

In the Matter of

Amendment of Section 73.202(b), RM-6805
Table of Allotments,
FM Broadcast Stations.
(Ozark, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Morgan Broadcasting Limited Partnership (petitioner), licensee of Station WNER(FM), Channel 280A, Ozark, Alabama, seeking the substitution of Channel 280C3 for Channel 280A, and modification of its license accordingly, to specify the higher power channel.

2. A staff engineering analysis of the proposal reveals that Channel 280C3 can be allotted to Ozark at the petitioner's present site[1] in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[2]

3. We believe the proposal warrants consideration. Therefore, we shall propose to substitute Channel 280C3 for Channel 280A at Ozark, Alabama. As requested, we also propose to modify the Class A license of Station WNER(FM) to specify operation on Channel 280C3. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 280C3 at Ozark.

4. Accordingly, in order to provide Ozark with its first expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Ozark, Alabama	280A, 285A	280C3, 285A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard J. Braun, Esq.
Shelley Sadowsky, Esq.
Rosenman & Colin
1300 -19th St., NW
Suite 200
Washington, DC 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Coordinates at the petitioner's present site are 31-26-25 and 85-33-49.

[2] Use of the petitioner's present site clears the authorized transmitter location of Station WAAO-FM, Andalusia, Alabama, BPH-840919JC, at coordinates 31-20-27 and 86-28-02. Although Station WAAO-FM presently operates on Channel 284A at Andalusia, it was ordered to relocate to Channel 279A in MM Docket No. 86-455. *See* 2 FCC Rcd 7263 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-127

In the Matter of

Amendment of Section 73.202(b), RM-5674
Table of Allotments,
FM Broadcast Stations.
(Mokelumne Hill, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* herein, 2 FCC Rcd 2808 (1987), issued in response to a petition filed by Eric R. Hilding (petitioner), proposing the allotment of Channel 259A to Mokelumne Hill, California, as a first local broadcast service. Petitioner filed supporting comments reiterating his intention to apply for the channel if allotted. No other comments were received.

2. The *Notice* requested the petitioner to provide sufficient information to demonstrate that Mokelumne Hill qualifies as a "community" for allotment purposes since it is not listed in the U.S. Census. In response, the petitioner asserts that Mokelumne Hill has its own post office as well as a gas station, grocery store, five restaurants, a gun repair and upholstery service, and an international book binding business.

3. Based on the totality of the evidence submitted by the petitioner, we believe it is insufficient to establish that Mokelumne Hill qualifies as a community for allotment purposes and that it would not serve the public interest to allot Channel 259A there.

4. Accordingly, IT IS ORDERED, That the petition for rule making filed by Eric R. Hilding (RM-5674), in the above-captioned proceeding, IS DENIED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-455

In the Matter of

Amendment of Section 73.202(b),	RM-6397
Table of Allotments,	RM-6597
FM Broadcast Stations.	
(Dora and Warrior, Alabama)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 18, 1989; Released: October 2, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5707 (1988), proposing the allotment of Channel 254A to Dora, Alabama, as that community's first local FM service. Randolph M. Howes, the petitioner for the Dora allotment stated his intention to apply for the channel, if allotted to the community. Also, James Brown filed comments in support of the allotment of Channel 254A to Dora, Alabama, and stated his intention to apply for the channel, if allotted. In response to the *Notice*, Billy G. Hogan d/b/a/ Hogan Broadcasting System filed comments and a counterproposal requesting the allotment of Channel 254A to Warrior, Alabama, as its first local FM service.[2]

2. Since the proposals are separated by a distance of 2.6 kilometers (1.6 miles), whereas a minimum distance of 105 kilometers (65 miles) is required between Class A co-channel allotments, they are mutually exclusive.

3. While the *Notice* proposed allotting Channel 254A to Dora, Alabama, in its counterproposal Hogan states that Warrior should receive the allotment, since it is the larger of the two communities. We believe that both communities are deserving of a first local FM service. However, Channel 254A is the only channel available to either Dora or Warrior. Thus, we shall base our decision on the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

(1) first full-time aural service;

(2) second full-time aural service;

(3) first local service; and

(4) other public interest matters.

[Co-equal weight given to priorities (2) and (3)]

4. The allotment of Channel 254A to either Dora or Warrior would provide a first local service, thus fulfilling priority (3). Because both proposals would advance priority (3), our decision must consider other public interest factors weighing in favor of one proposal more heavily than the other. In this regard, we note that Warrior (population 3,260) and Dora (population 2,327) are both in close proximity to each other. Thus, we believe that the public interest would be served by allotting Channel 254A to Warrior, since it has the larger population.

5. A staff engineering analysis has determined that Channel 254A can be allotted to Warrior, Alabama, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[3]

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 16, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Warrior, Alabama	254A

7. The window period for filing applications will open on **November 17, 1989,** and close on **December 18, 1989.**

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Ordee D. Pearson, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Warrior, Alabama, has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on 12/07/88.

[3] Coordinates for Channel 254A at Warrior, Alabama are 33-50-13 and 86-48-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

In Reply Refer to:

RAO Letter 14

Released: September 28, 1989

Responsible Accounting Officers:

Re: Classification of Inside Wiring Services for Accounting Purposes

In *National Association of Regulatory Utility Commissioners v. FCC*, No. 86-1678 (D.C. Cir. July 7, 1989)(*NARUC v. FCC)*, the United States Court of Appeals for the District of Columbia Circuit remanded the Commission's decisions preempting state regulation of inside wiring services for further proceedings. This letter instructs carriers to continue classifying inside wiring services as nonregulated for accounting purposes pending Commission action in those proceedings.

Section 32.23(a) of the Commission's Rules, 47 C.F.R. §32.23(a), describes the circumstances under which carriers are to classify their activities as nonregulated for accounting purposes. That section provides, among other items, that preemptively deregulated activities must be classified as nonregulated activities. Prior to the decision in *NARUC v. FCC*, carriers had relied on this provision in classifying all their inside wiring services as nonregulated for accounting purposes.

Section 32.23(a) also provides that activities that have been deregulated at the interstate level, but not preemptively deregulated, are to be classified as regulated activities until such time as the Commission decides otherwise. Several carriers have inquired whether this provision mandates that they reclassify their inside wiring services as regulated for accounting purposes. Such a reclassification would subject costs incurred in providing inside wiring services to the jurisdictional separations process and could result in changes in carriers' interstate revenue requirements. Reclassification might also require costly changes in the carriers' internal accounting systems and cost allocation manuals.

We believe it appropriate to resolve the carriers' questions and to avoid the consequences described above during the period that the regulatory status of inside wiring is under consideration. Accordingly, we require that all subject carriers continue to classify all inside wiring services as nonregulated for accounting purposes pending Commission action on remand of *NARUC v. FCC*. *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 79 (1987)(*Joint Cost Order), recon.*, 2 FCC Rcd 6283 (1987)(*Reconsideration Order), further recon., 3 FCC Rcd 6701 (1988)(Further Reconsideration Order), petition for review pending,* Southwestern Bell Corp. v. FCC, D.C. Circuit No. 87-1764 (filed Dec. 14, 1987).

This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, must be filed within 30 days of the date of this letter. *See* 47 C.F.R. §1.4(b)(2).

Sincerely,

Kenneth P. Moran
Chief, Accounting and Audits Division

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-600

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Colorado City, Arizona)	RM-6468

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 11, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 788 (1988), proposing the allotment of Channel 296Cl to Colorado City, Arizona, as that community's first local broadcast service. Diana L. Le Baron, the petitioner for the Colorado City allotment, filed comments and stated an intention to apply for the channel, if allotted.

2. A staff engineering analysis has determined that Channel 296C1 can be allotted to Colorado City, Arizona, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. We believe the public interest would be served by allotting Channel 296C1 to Colorado City, Arizona, as that community's first local broadcast service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 17, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Colorado City, Arizona	296C1

4. The window period for filing applications for Channel 296Cl at Colorado City, Arizona, will open on **November 20, 1989,** and close on **December 20, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Ordee D. Pearson, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates for Channel 296Cl at Colorado City, Arizona, are 36-59-24 and 112-58-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-432

In the Matter of

Amendment of Section 73.202(b), RM-6795
Table of Allotments,
FM Broadcast Stations.
(Denmark, South Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Denmark Communications (petitioner), requesting the allotment of Channel 239A to Denmark, South Carolina, as the community's first local FM service. Petitioner states that it will apply for the channel, if allotted. Channel 239A can be allotted to Denmark in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 239A to Denmark, South Carolina, since it could provide the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Denmark, South Carolina	–	239A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Hugh David Jett
243 Bayview Drive
Mt. Pleasant, South Carolina 29464
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 33-19-24 and West Longitude 81-08-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-434

In the Matter of

Amendment of Section 73.202(b), RM-6866
Table of Allotments,
FM Broadcast Stations.
(Naples, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. Sterling Communication Corp. (petitioner), licensee of Station WSGL-FM, Naples, Florida, has filed a petition for rule making requesting the substitution of Channel 276C3 for Channel 276A at Naples, Florida, and modification of its license for Station WSGL-FM to specify the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner notes that it has previously requested the substitution of Channel 276C2 for Channel 276A at Naples (RM-6261). However, because the C2 proposal would require relocation of WSGL-FM's tower, and a frequency change for Station WFKZ, Plantation Key, Florida, petitioner believes that the C3 upgrade proposal, which could be effectuated from Station WSGL's present transmitter site, would better serve the public interest.

3. Channel 276C3 can be allotted to Naples in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) east, at Station WSGL-FM's present transmitter site.[1]

4. As requested, we shall also propose to modify the license of Station WSGL-FM to specify operation on Channel 276C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the higher powered channel at Naples or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

5. We believe the public interest would be served by proposing the substitution of Channel 276C3 for Channel 276A at Naples since it could enable Station WSGL-FM to expand its coverage area. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Naples, Florida	228A, 233C, 276A, 288A	228A, 233C, 276C3, 288A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Chester F. Naumowicz
Ward & Mendelsohn, P.C.
1100 - 17th Street, N.W.
Suite 900
Washington, D.C. 20036
(Attorney for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 26-07-34 and West Longitude 81-43-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-435

In the Matter of

Amendment of Section 73.202(b), RM-6810
Table of Allotments,
FM Broadcast Stations.
(Fuquay-Varina, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cedar Raleigh Limited Partnership (petitioner), requesting the substitution of Channel 280C3 for Channel 280A at Fuquay-Varina, North Carolina, and the modification of its license for Station WNND to specify operation on the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Channel 280C3 can be allotted to Fuquay-Varina in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6.0 miles) east to avoid a short-spacing to Station WTQR, Channel 281C, at Winston-Salem, North Carolina.[1] As requested, we also propose to modify petitioner's license for Station WNND to specify operation on Channel 280C3. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Fuquay-Varina or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 280C3 for Channel 280A at Fuquay-Varina, since it could enable Station WNND to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Fuquay-Varina, North Carolina	280A	280C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 24, 1989,** and reply comments on or before **December 11, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Brian M. Madden, Esq.
Robert Clifton Burns, Esq.
Cohn & Marks
1333 New Hampshire Avenue, N.W., Suite 600
Washington, D.C. 20036
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 35-33-46 and West Longitude 78-41-51.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-618

In the Matter of

Amendment of Section 73.202(b),	RM-6133
Table of Allotments,	RM-6912
FM Broadcast Stations	
(Fort Rucker and Geneva, Alabama;	
Blakely, Georgia[1])	

ORDER TO SHOW CAUSE

Adopted: September 18, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. The Commission issued the *Notice of Proposed Rule Making* in this proceeding, 3 FCC Rcd 380 (1988), proposing the deletion of FM Channel 226A at Fort Rucker, Alabama, in response to a petition for rule making filed by the United States Army Aviation Center (petitioner), Fort Rucker, Alabama. Petitioner filed comments in response to the *Notice*.[2] Westar Broadcasting Company ("Westar"), Rucker Radio ("Rucker"),[3] and Sky Way Broadcasting, Inc. ("Sky Way") filed comments in opposition to the proposal. Shelley Broadcasting Company, Inc. ("Shelley"), licensee of Station WRJM-FM, Channel 228A, Geneva, Alabama, filed comments and a counterproposal[4] proposing the substitution of Channel 229C1 for Channel 228A at Geneva[5] and the modification of its license to specify the new channel. To accommodate the Geneva substitution, Shelley proposes that Channel 226A be substituted for Channel 228A at Blakely, Georgia, and that the license of Radio Blakely, Inc., for Station WBBK-FM, Channel 228A, Blakely, be modified to specify the new channel.[6] Shelley's counterproposal also requires the deletion of Channel 226A at Fort Rucker. Shelley states that it will reimburse Radio Blakely, Inc., for necessary expenses required to change from Channel 226A to Channel 228A. Petitioner, Shelley and Rucker filed reply comments.

2. After the close of the pleading cycle, Shelley submitted additional comments suggesting that the Geneva substitution could be accomplished without the deletion of the Fort Rucker allotment if the Commission substituted Channel 263A for Channel 226A at Fort Rucker, and Channel 226A for Channel 228A at Blakely. Shelley notes that the substitution at Fort Rucker constitutes a practical solution to accommodate all parties in this proceeding. Shelley claims that the substitution of Channel 263A at Fort Rucker would not require the applicants[7] for that allotment to amend their applications to specify new tower sites.[8]

3. We proposed the deletion of Channel 226A at Fort Rucker based on petitioner's claim that an FM station at Fort Rucker would require an antenna of 100 meters, and any obstruction with a height greater than 15.24 meters and located within seven miles of the base would interfere with the base's present operation. Petitioner claims that no available site off-base could provide city grade coverage to Fort Rucker, as required by Section 73.315 of the Commission's rules, without interfering with the air space of municipal and private aeronautical facilities. Petitioner also argues that Fort Rucker is not an incorporated city with municipal service, but is a restricted military installation. Although we make no final determination as to the merits of the various pleadings in this proceeding at this time, we note that the applicants for the Fort Rucker allotment have specified existing towers as transmitter sites.

4. We believe the public interest would be served by consideration of the substitute counterproposal submitted by Shelley, because in the event that we retain the Fort Rucker allotment, Shelley's counterproposal would resolve the conflicts in this proceeding. A staff study confirms that Channel 229C1 could be allotted to Geneva if Channel 263A is substituted for Channel 226A at Fort Rucker and if Channel 226A is substituted for Channel 228A at Blakely.[9] The study also confirms that Station WBBK-FM could continue to operate from its existing site if Channel 226A is substituted for Channel 228A at Blakely. Furthermore, Channel 263A may be used at the transmitter sites specified by the applicants for the Fort Rucker allotment.

5. In order to proceed with the proposals in this proceeding, it is necessary to issue an Order to Show Cause to Radio Blakely, Inc., licensee of Station WBBK-FM, Channel 228A, Blakely, why its license should not be modified to specify operation on a different Class A channel as follows:

	Channel No.	
City	Present	Proposed
Blakely, Georgia	228A	226A

Shelley has acknowledged a responsibility to reimburse Station WBBK-FM for the reasonable and prudent expenses Station WBBK-FM would incur in changing to another Class A channel.

6. The Commission has made a preliminary determination that, in the event that Channel 226A is not deleted at Fort Rucker, the public interest would be advanced by substituting Channel 263A for Channel 226A at Fort Rucker and by substituting Channel 229C1 for Channel 229C2 at Geneva and modifying the license of Station WRJM-FM accordingly to specify the higher class channel. A final determination regarding these amendments to the Table of Allotments must await the outcome of this show cause order concerning the license modification of Radio Blakely, Inc., for Station WBBK-FM, Blakely, as discussed herein. Although Radio Blakely, Inc., is provided an opportunity to object to the ordered channel change, this Order does not afford additional opportunity either to comment on the merits of the proposals or for the acceptance of additional counterproposals.

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Radio Blakely, Inc., licensee of Station WBBK-

FM, Blakely, Georgia, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 226A instead of Channel 228A.

8. Pursuant to Section 1.87 of the Commission's Rules, Radio Blakely, Inc., may not later than **November 24, 1989,** file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Radio Blakely, Inc., to furnish additional information. If Radio Blakely, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radio Blakely, Inc., will be deemed to have consented to the modification as proposed in the Order to Show Cause, and a final order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this Order to Show Cause BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Radio Blakely, Inc., P.O. Box 958, Statesboro, GA, 30458.

10. A copy of any comments by Radio Blakely, Inc., in this proceeding should be served on the following:

Department of the Army
U.S. Army Aviation Center
ATTN: Col. James B. Saver
Fort Rucker, Alabama
36362-5000
(Petitioner)

John A. Borsari, Esq.
Borsari & Kump
900 17th Street, N.W.
Suite 900
Washington, D.C. 20006
(Counsel for Shelley Broadcasting Company, Inc.)

Mark E. Fields, Esq.
Miller & Fields, P.C.
1990 M Street, N.W.
Suite 760
Washington, D.C. 20036
(Counsel for Sky Way Broadcasting)

Jill F. Pender, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036-2679
(Counsel for Rucker Radio and Radio Blakely, Inc.)

Ronald Jarvis, Esq.
Gardner, Corton & Douglas
Suite 750 North
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Counsel for Westar Broadcasting Company)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 8, 1981.

12. For further information concerning this proceeding, contact Michael Ruger, Mass Media Bureau, (202) 632-6302. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commissioner staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Geneva and Blakely have been added to the caption.

[2] Petitioner submitted its comments directly to the Chief of the Allocations Branch instead of filing comments with the Secretary's office in accordance with the Commission's rules. Although petitioner's actions were in violation of the Commission's rules, as a discretionary matter we will consider its comments in this proceeding.

[3] Rucker filed opposing comments under the name of WGBA, Inc.

[4] Shelley's counterproposal was placed on public notice August 1, 1989. *See* Report No. 1789 (RM-6912).

[5] After Shelley filed its counterproposal, the Commission substituted Channel 229C2 for Channel 228A at Geneva and modified the license of Station WRJM-FM, Geneva, accordingly. *See Report and Order (Geneva, Alabama; Freeport and Southport, Florida)*, 3 FCC Rcd 5544 (1988). Shelley filed an application for a construction permit to conform with the substitution (BPH-881018II).

[6] Shelley also proposed the allotment of Channel 225A to Midland City, Alabama, to accommodate applicants for the Fort Rucker allotment. However, Shelley did not express an interest in applying for the channel if allotted. Because there has been no expression of interest in a Midland City allotment, we will not consider this portion of Shelley's counterproposal.

[7] Sky Way (File No. BPH-880407NA) and Rucker Radio (BPH-880407MJ) filed applications for Channel 226A at Fort Rucker.

[8] Rucker filed untimely comments in response to Shelley's substitute counterproposal.

[9] Proposed coordinates for Channel 263A at Fort Rucker are 31-21-55 and 85-40-49, with a site restriction of 2.2 kilometers (1.4 miles) east to avoid a short-spacing to Station WZTZ(FM), Channel 266A, Elba, Alabama.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-185

In the Matter of

Amendment of Section 73.202(b),	RM-6288
Table of Allotments,	RM-6499
FM Broadcast Stations.	RM-6747
(Montgomery, Dunbar and Mount Gay-Shamrock, West Virginia; and Paintsville, Kentucky)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 18, 1989; Released: October 3, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Further Notice of Proposed Rule Making*, 4 FCC Rcd 669 (1989), which optionally proposed: (1) the allotment of Channel 227A to Montgomery, West Virginia, as that community's first local FM service, at the request of Upper Kanawha Valley Broadcasters, Inc. ("Upper Kanawha"); (2) the substitution of Channel 233B1 for Channel 233A at Dunbar, West Virginia, modification of Station WBES-FM's construction permit to specify operation on the higher class co-channel, and the substitution of Channel 227A for Channel 234A at Mount Gay-Shamrock, West Virginia, at the request of Donald Mills, d/b/a West Virginia Rural Radio Company ("WV Rural Radio");[2] or (3) the deletion of Channel 234A at Mount Gay-Shamrock, the substitution of Channel 233B1 for Channel 233A at Dunbar, and the allotment of Channel 227A to Montgomery, at the request of WV Rural Radio.

2. The Commission initially issued the *Notice of Proposed Rule Making*, 3 FCC Rcd 2555 (1988), at the request of Upper Kanawha. The *Notice* proposed the allotment of Channel 227A to Montgomery, West Virginia. Subsequently, we issued the *Further Notice* to address a separate petition filed by WV Rural Radio proposing the substitution of Channel 233B1 for Channel 233A at Dunbar, West Virginia, and either the substitution of Channel 227A for vacant and unapplied for Channel 234A[3] at Mount Gay-Shamrock or the deletion of Channel 234A at Mount Gay-Shamrock without a replacement channel. The latter action would permit both the allotment of Channel 227A at Montgomery and the upgrade at Dunbar. The proposed use of Channel 227A at either Montgomery or Mount Gay-Shamrock created a mutually exclusive situation since the communities are separated by less than the required 105 kilometers (65 miles) for co-channel allotments.

3. Upper Kanawha and George Waters filed comments in support of the Montgomery allotment. Upper Kanawha restated its intention to apply for the channel. Mills Broadcasting Inc. ("Mills"),[4] filed supporting comments reiterating its intention to construct the higher class facilities at Dunbar. Mills also advanced a contingent counterproposal in the event that an expression of interest was received for vacant and unapplied for Channel 234A at Mount Gay-Shamrock.[5] Morehead State University ("Morehead"), filed a counterproposal seeking the allotment of Channel 234C2 to Paintsville, Kentucky, as that community's second local FM service.[6] Mills and Morehead filed reply comments.[7] Virginia-Kentucky Broadcasting Co., Inc. ("VA-KY Broadcasting"), licensee of Station WMJD-FM, Grundy, West Virginia, filed reply comments in opposition to Mills' contingent counterproposal.[8] No other comments were received.

4. Morehead, in its comments, supports the adoption of option (1) which would permit the allotment of Channel 227A to Montgomery. Morehead urges the denial of the proposed upgrade at Dunbar in favor of providing a first local service at Montgomery and a second such service at Paintsville. Morehead contends that its counterproposal for the allotment of Channel 234C2 at Paintsville would provide that community with "a competitive FM voice, and a diversity of views" as a second local FM service.

5. Mills, in reply comments, argues that Morehead's counterproposal is "fatally flawed." Mills claims that if Channel 234C2 were allotted to Paintsville a city-grade signal would not be provided over the community of license. Furthermore, Mills alleges that Morehead failed to demonstrate that no channel is available in the non-commercial educational FM band before seeking a commerical channel. Mills argues that Morehead proposes to operate Channel 234C2 as a non-commerical educational station. Mills goes on to state that Morehead should have requested a Class A allotment, instead of a Class C2 channel, because a Class A channel would be compatible with its proposed upgrade.

6. Morehead, in its reply comments, states that Mills erred in "its assumption" that the proposal at Paintsville was for non-commercial operation. Morehead asserts that the Paintsville proposal could be sited and provide a city-grade signal in accordance with Section 73.315 of the Commission's Rules. However, Morehead agrees to accept Channel 234C3 in lieu of the Class C2 proposal, in order to accommodate all the proposals.

7. In view of the fact that Morehead has expressed an interest in a lower class channel, we find that all parties may be accommodated with new or improved service at three communities. Therefore, based on the information before us, we believe the public interest would be served by allotting Channel 227A to Montgomery, West Virginia, Channel 234C3 to Paintsville, Kentucky, and Channel 233B1 to Dunbar, West Virginia. In view of the aforementioned, we shall delete Channel 234A from Mount Gay-Shamrock, West Virginia. The allotments can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, as specified below.

8. Channel 227A can be allotted to Montgomery with a site restriction of 6.5 kilometers (4 miles) west of the community.[9] The restriction is necessary in order to avoid short spacings to Station WCWV(FM), Channel 225B, Summersville, West Virginia, and vacant and unapplied for Channel 227A at White Sulphur Springs, West Virginia. Channel 234C3 can be allotted to Paintsville at the city reference coordinates.[10] Channel 233B1 can be allotted to Dunbar as a substitute for Channel 233A with a site

restriction of 4.9 kilometers (3.1 miles) north of the city.[11] The restriction is required in order to avoid a short spacing to Station WVMA(FM), Channel 231B at Oak Hill, West Virginia.

9. As requested, we are herein modifying the license of Station WBES-FM at Dunbar to specify operation on Channel 233B1 in accordance with Section 1.420(g) of the Commission's Rules.

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 17, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Paintsville, Kentucky	255C1, 234C3
Dunbar, West Virginia	233B1
Montgomery, West Virginia	227A
Mount Gay-Shamrock, West Virginia	---

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WBES-FM, Dunbar, West Virginia, IS MODIFIED, to specify operation on Channel 233B1 in lieu of Channel 233A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. The window period for filing applications on Channel 227A at Montgomery, West Virginia, and Channel 234C3 at Paintsville, Kentucky, will open on **November 20, 1989,** and close on **December 20, 1989.**

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Paintsville, Kentucky, has been added to the caption.

[2] Subsequently, Mills Broadcasting Inc., acquired the license of Station WBES-FM at Dunbar.

[3] As stated in the *Further Notice*, Channel 234A was allotted to Mount Gay-Shamrock, West Virginia, in MM Docket No. 84-231. The window period for filing applications for Channel 234A closed on March 10, 1988, and no applications were filed.

[4] Formerly WV Rural Radio.

[5] Mills, in its counterproposal, suggests the allotment of Channel 250A to Mount Gay-Shamrock, West Virginia, which also requires the substitution of channels at Grundy, Virginia, and Matewan, West Virginia. It suggests the substitution of Channel 294A for Channel 250A (Station WMJD-FM), Grundy, and the substitution of Channel 234A for vacant and applied for Channel 294A at Matewan. We have not considered the aforementioned contingent counterproposal since there has been no expression of interest for the Mount Gay-Shamrock allotment.

[6] Public Notice of the counterproposal was given May 4, 1989, Report No. 1778.

[7] Morehead and Mills also filed joint supplement to reply comments.

[8] In light of the discussion concerning the contingent counterproposal, we find VA-KY Broadcasting's opposition is moot. *See* fnt 5 *supra*.

[9] The restricted site coordinates are 38-08-47 and 81-23-40.

[10] The city reference coordinates are 37-48-48 and 82-48-00.

[11] The restricted site coordinates are 38-24-17 and 81-43-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS SATELLITE CORPORATION — File No. CSS-87-005-LA

Application for authority to participate in the launch of the INTELSAT VI (F-2)

ORDER AND AUTHORIZATION

Adopted: September 26, 1989; Released: October 3, 1989

By the Chief, International Facilities Division:

1. The Commission has under consideration application, File No. CSS-87-005-LA, filed by Communications Satellite Corporation (Comsat) on March 31, 1987, and updated on September 22, 1989, for authority to participate in the launch, positioning and in-orbit testing of the modified INTELSAT VI (F-2) satellite.

2. The application was placed on the Commission's Public Notice on April 8, 1987. No comments were received.

3. The modified INTELSAT VI (F-2) was delivered to the launch site in Kourou, French Guiana, in early May 1989 and is scheduled to be launched on October 5, 1989, utilizing an Ariane 44L launch vehicle. The satellite's operating position will be at a nominal location of 335.5 degrees East Longitude in the Atlantic Ocean Region (AOR). It will replace the INTELSAT VA (F-10) and will serve the AOR Primary Path role. The INTELSAT VA (F-10) will be deployed to 174 degrees East Longitude and provide Pacific Ocean Region (POR) Primary Path services. It is anticipated that the INTELSAT VI (F-2) will be in service by the end of March 1990.

4. The costs associated with the modified INTELSAT VI (F-2) are as follows: (all amounts in real year dollars)

HAC Contract (including delivery price, engineering charges and amendments)	$128,350,000
Performance incentives, capitalized	$ 10,712,000
Performance incentives, expensed	$ 15,478,000
HAC Launch Support	$ 3,855,000
Arianespace Launch Vehicle and services	$ 70,041,000
TOTAL INTELSAT	$228,436,000
TOTAL COMSAT (based on current ownership share of 26.913162%)	$ 61,479,351

5. In view of the foregoing and the need to provide the necessary satellite facilities to meet traffic requirements, we conclude that the public interest will be served by a grant of the subject request. Accordingly, Comsat is AUTHORIZED to participate in the launch and test program of the INTELSAT VI (F-2) satellite to be positioned at 335.5 degrees East Longitude over the Atlantic Ocean, subject to the following terms and conditions:

(a) This authorization is limited to the described testing program. Any change in the authorized location due to a launch delay or other circumstances will be considered upon a proper request by Comsat for authority;

(b) Comsat shall furnish via the INTELSAT VI (F-2) only those channels of communication for commercial service which have been, or may be, authorized by the Commission under Section 214 of the Communications Act of 1934, as amended;

(c) Within 30 days after completion of the testing program, Comsat shall provide the Commission with a summary report of its results and upon request, shall make the detailed test data available;

(d) Conduct of the program authorized here shall be without interruption of commercial satellite service now authorized at U.S. earth stations;

(e) Neither this authorization nor any right granted herein shall be assigned or otherwise transferred without approval of the Commission; and

(f) Unless extended or modified for good cause, this authorization shall terminate six months after the release date of this order.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

NEW ENGLAND TELEPHONE
AND TELEGRAPH COMPANY
AND NEW YORK TELEPHONE
COMPANY

Petition for Waiver of Access
Billing Requirements for Joint
Service Provision and Answer to
Show Cause Order

ORDER

Adopted: September 25, 1989; Released: October 3, 1989

By the Chief, Common Carrier Bureau:

1. The New England Telephone and Telegraph and New York Telephone Companies (NYNEX) filed a petition for a waiver of the October 4, 1988, Common Carrier Bureau Order[1] requiring local exchange carriers (LECs) participating in multiple meet point billing arrangements[2] to comply with the verification criteria set forth in the Multiple Exchange Carrier Access Billing (MECAB) guidelines on March 30, 1989. NYNEX also filed an answer to a Bureau Order issued February 28, 1989,[3] which directed NYNEX to show cause why NYNEX did not comply with the MECAB guidelines within the time periods established by the Bureau.

2. The *October Order* directed those LECs participating in meet point billing arrangements who adopt the multiple bill option to comply with the MECAB verification guidelines of the Exchange Carrier Standards Association, and to attach a sample bill to their respective filings to demonstrate their compliance. Several LECs filed revised tariffs in response to the *October Order*. An AT&T petition challenging some of those revised tariffs asserted that the sample switched access bill that NYNEX submitted with its filing was deficient under the *October Order* requirements, which are designed to ensure that multiple meet point bills contain sufficient information to allow interexchange carriers (ICs) to verify the accuracy of such bills. NYNEX admitted that it failed to include billing account references (BAR) or billing account cross-references (BACR), or initial billing company and billing date identification in its sample bill. The Bureau's *February Order* expressed concern that NYNEX failed to seek a waiver of the *October Order* and directed NYNEX to show cause why it did not comply with the MECAB verification guidelines within the time periods established by the Bureau. Subsequently, on March 30, 1989, NYNEX filed the instant waiver request and a concurrent answer to the show cause Order.[4]

3. In the waiver petition, NYNEX states, *inter alia*, that it is in compliance with the MECAB guidelines with three exceptions: (1) Billing Account Reference and Billing Account Cross-Reference information; (2) Initial Billing Company (IBC) Bill Date and IBC Usage dates; and (3) the Meet Point Billing Option Indicator.[5] The petition maintains that NYNEX must complete extensive modifications to several of its data processing systems before it can fully comply with the MECAB guidelines. The petition projects that the completion of the modifications and subsequent testing of the systems will take approximately four to six months from the date of the petition, March 30, 1989, and establishes August 1989 as the earliest date by which NYNEX can attain full compliance. In addition, the petition contends that prior to MECAB guideline compliance, NYNEX has and will continue to include in its bills verification information sufficient to enable its interexchange carrier customers to verify the accuracy of their multiple bills.

4. The NYNEX answer to the show cause Order reiterates the explanation given in NYNEX's waiver request, adding that it acted in good faith to comply in a timely manner with the *October Order*. NYNEX contends that, pursuant to suggestions made by the Commission staff, it demonstrated in its December 1988 filing the extent of its compliance with the MECAB guidelines, identified the areas of noncompliance, and specified the date it would achieve full compliance. NYNEX asserts that it assumed its December filing constituted compliance and therefore did not request a waiver of the *October Order* at that time.

5. On August 4, 1989, approximately four months after NYNEX filed its petition, the Common Carrier Bureau issued a letter directing NYNEX to submit a progress report detailing what steps NYNEX had taken to comply with the *October Order*, what remaining steps it needed to take to achieve full compliance, and by what date NYNEX expected to comply fully, along with an explanation and justification for that projection.[6]

6. Thereafter, on August 18, 1989, NYNEX filed its report advising the Bureau that the data processing system modifications necessary for the NYNEX Telephone Companies to achieve full compliance with the MECAB guidelines were complete. Therefore, the bills for the NYNEX Telephone Companies' jointly provided FGC and FGD access services are now in full compliance with the MECAB guidelines.

7. In view of NYNEX's response to the August 4, 1989, Bureau letter certifying full compliance with the MECAB guidelines, the NYNEX petition for temporary waiver of the *October Order* is moot. Moreover, we see no need to pursue further NYNEX's prior non-compliance with the MECAB guidelines.

8. Accordingly, IT IS ORDERED that NYNEX's petition for temporary waiver of the *October Order* IS DISMISSED AS MOOT and the related show cause proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Access Billing Requirements for Joint Service Provision, CC Docket No. 87-579, Phase II, DA 88-1544, released Oct. 4, 1988 (Com.Car.Bur.) (*October Order*).

[2] The *October Order* applied to Feature Group C and Feature Group D Access Service.

[3] Access Tariff Revisions To Implement Meet Point Billing, CC Docket No. 87-579, Phase II, 4 FCC Rcd 2163 (1989) (*February Order*).

[4] NYNEX was the only LEC involved in the proceeding to file for a waiver of the *October Order*. All the other LECs involved were either found to be in compliance or promptly submitted the requisite documentation to verify compliance with the MECAB guidelines.

[5] *See* MECAB Sections 5.03, 6.01, and 7.04.

[6] Letter from Chief, Tariff Division, to R. Visconti and P. Lee, New England Telephone and Telegraph Company and New York Telephone Company, dated Aug. 4, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Transmitter Frequency Tolerance
in the Aviation Services

ORDER

Adopted: September 21, 1989 Released: September 22, 1989

By the Chief, Private Radio Bureau:

1. In an *Order* released May 22, 1984, FCC 84-220, 49 FR 21737 (1984), the Commission amended Section 87.65 of the Rules, 47 C.F.R. § 87.65 to require, among other things, aircraft radio stations operating in the frequency band 100 MHz to 470 MHz to maintain a frequency tolerance of 30 parts per million (ppm).[1] Section 87.133(a) of the rules, 47 C.F.R. § 87.133(a) provides that 30 ppm is the maximum frequency tolerance permitted after January 1, 1985, for new and replacement transmitters and for all transmitters after January 1, 1990. The effect of this rule is to require modification or replacement of all aircraft transmitters operating in the 100 MHz to 470 MHz band that do not meet the 30 ppm frequency tolerance by January 1, 1990.

2. When the Commission adopted the tolerance in 1984, it stated its intention to conform Part 87 of the Rules to the Final Acts of the World Administrative Radio Conference, Geneva, 1979 (WARC 79), which became effective internationally on January 1, 1982. The Commission noted that the proposed frequency tolerance was published in the *Fifth Notice of Inquiry* in General Docket 80-739 FCC 82-213, 47 FR 25982 (1982) and that no comments were received regarding the proposed frequency tolerance. The Commission also noted in its 1984 *Order* that adoption of the frequency tolerance was consistent with the three-phase plan of the Federal Aviation Administration (FAA) to implement 25 kHz channel spacing in the 118-136 MHz band. No objections to or petitions for reconsideration of this action were received.

3. In a letter dated July 31, 1989, the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the General Aviation Manufacturers Association, and the Helicopter Association International (hereafter petitioners) jointly petitioned the Commission to exclude all currently installed VHF aircraft radios from the 30 ppm frequency tolerance requirement. In support of its petition, petitioners estimate that as many as 93,000 radios are currently installed in the general aviation fleet that do not meet the new tolerance requirement. Petitioners point out that these radios are installed in small, single-engine, piston-powered aircraft which are primarily operated in relatively remote areas of the United States where they would not interfere with other U.S. or foreign radios employing the 30 ppm tolerance. The petitioners argue that the cost of replacing these radios which they estimate to be approximately $1200 or the cost of modifying them, between $450 and $650 frequently will exceed the radio's market value. Further, the petitioners state that the international Radio Regulations do not require all installed aircraft radios to meet to 30 ppm requirement by January 1, 1990. They note that footnote 28 to appendix 7 of the international Radio Regulations permits installed aircraft radios with channel spacing of 50 kHz to continue to operate with a frequency tolerance of 50 ppm.

4. We recognize the potential burden resulting from the pending change in the frequency tolerance requirement on the general aviation community. Additionally, we note that the continued operation of currently installed aircraft stations with a frequency tolerance of 50 ppm should not cause interference to other stations. Therefore, to alleviate the pending impact and to allow sufficient time to analyze the effects of petitioners' request on the general aviation community, we are extending the January 1, 1990, deadline to January 1, 1992, for meeting the 30 ppm frequency tolerance requirement.

5. Accordingly, pursuant to the authority in Sections 0.331 and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.3, the requirement contained in footnote 2 of Section 87.133(a) of the Rules, 47 C.F.R. § 87.133(a), for currently installed aircraft stations operating in the band 100-470 MHz to maintain a frequency tolerance of 30 ppm effective January 1, 1990, IS WAIVED until January 1, 1992. The frequency tolerance for aircraft stations subject to this waiver continues to be 50 ppm.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTE

[1] Section 87.65 of the rules has since been recodified as Section 87.133, 47 C.F.R. § 87.133. *See* 53 FR 28940 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-429

In the Matter of

Amendment of Section 73.202(b), RM-6874
Table of Allotments,
FM Broadcast Stations.
(Wellington, Kansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 6, 1989

By the Chief, Allocations Branch:

1. A petition for rule making has been filed by Johnson Enterprises, Inc. (petitioner), seeking the substitution of FM Channel 230C2 for Channel 228A at Wellington, Kansas. Petitioner also requests modification of its license for Station KZED(FM) to specify Channel 230C2 in lieu of Channel 228A.

2. We believe petitioner's proposal warrants consideration. Channel 230C2 can be allotted to Wellington, Kansas, at the petitioner's specified site, in compliance with the Commission's spacing requirements.[1] The allotment of Channel 230C2 at Wellington, would, however, be contingent on Station KSPI-FM, Stillwater, Oklahoma, being licensed on Channel 229C2 in lieu of Channel 230C2.[2] *See* File No. BMPH-890123IB, amended April 4, 1989. We shall propose to modify the license of Station KZED(FM), Channel 228A, to specify operation on Channel 230C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Wellington, Kansas area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Wellington, Kansas	228A	230C2

4. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this order to the following:

Stillwater Publishing Company, Inc.
211 West 9th, P.O. Box 2288
Stillwater, Oklahoma 74076

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard R. Zaragoza
John J. McVeigh
Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037-1125
(Counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 230C2 at Wellington are 37-17-00 and 97-32-00.

[2] The *Report and Order* in MM Docket 88-39, 3 FCC Rcd 6425 (1988), modified the license for Station KSPI-FM to specify operation on Channel 229C2 in lieu of Channel 230C2.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-484

In the Matter of

Amendment of Section 73.202(b),	RM-5948
Table of Allotments,	RM-6241
FM Broadcast Stations.	
(Dennis Port and Harwich Port, Massachusetts)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 12, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, and *Order to Show Cause*, 2 FCC Rcd 6793 (1987), proposing the allotment of FM Channel 230A to Dennis Port, Massachusetts, as that community's first FM broadcast service, in response to a petition filed by Brian Dodge (petitioner). Petitioner filed comments restating his support for Channel 230A at Dennis Port.[1] Joan Orr and Marshfield Broadcasting Company, Inc., filed comments and a counterproposal and a supplement to the counterproposal.[2] Petitioner filed a late motion to extend time to file reply comments. MayJay Broadcasting, Inc. and Patch-Dunn and Associates of Cape Cod, Inc., filed reply comments. Marshfield Broadcasting filed a motion to withdraw its counterproposal on November 21, 1988.

2. The *Notice* stated that Channel 230A could be allotted to Dennis Port, Massachusetts, in compliance with the minimum distance separation requirements of the Commission's rules provided Channel 228A was deleted from Harwich Port, Massachusetts. A construction permit for Channel 228A at Harwich Port was issued to Mary Jane Kelley (BPH840217AP).[3] Petitioner proposed the substitution of Channel 226A for Channel 228A at Harwich Port, which can be allotted at the permit site for Channel 228A.

3. Joan Orr and Marshfield Broadcasting Company, Inc. (Orr and Marshfield) jointly counterproposed the allotment of Channel 232A to Dennis or Dennis Port, Massachusetts, modification of the license of Station WOCB-FM, West Yarmouth, Massachusetts, to specify Channel 236B in lieu of Channel 235B, and allotment of Channel 230A to Provincetown, Massachusetts. Orr stated her intention to file an application for Channel 232A at Dennis or Dennis Port, and indicated a willingness to reimburse Station WOCB-FM, West Yarmouth, for its reasonable expenses incurred in changing frequencies, if she is the successful applicant for Channel 232A. Marshfield stated its intention to file an application for Channel 230A at Provincetown, Massachusetts.

4. In view of the fact that Marshfied Broadcasting Company, Inc., has withdrawn the counterproposal, and the fact that in any event Orr's expression of interest is invalid for failure to comply with Section 1.52 of the Commission's Rules concerning signing and verification, no further analysis or a comparative study is necessary.

5. In our *Notice of Proposed Rule Making*, released November 5, 1987, we noted that a construction permit had been issued for Channel 228A at Harwich Port, Massachusetts, to Mary Jane Kelley, and we stressed that in the event of a modification, Mary Jane Kelley would be entitled to reimbursement for the reasonable costs of conversion to the new channel in accordance with established policy. *See Circleville, Ohio*, 8 FCC 2nd 159 (1967). Thus, we indicated that petitoner should state his willingness to reimburse Mary Jane Kelley in the event that petitioner is the ultimate permittee of the proposed Dennis Port allotment. Petitioner has made no reference to this in his comments. Therefore, the proposal will not be adopted. Petitioner may wish to search for a different Class A channel which does not affect an occupied channel and submit a new petition, which we would consider without prejudice.

6. In view of the foregoing, IT IS ORDERED, That the petition of Brian Dodge, requesting the allotment of Channel 230A to Dennis Port, Massachusetts, and the substitution of FM Channel 226A for Channel 228A at Harwich Port, Massachusetts, IS HEREBY DENIED.

7. IT IS FURTHER ORDERED, That the counterproposal filed by Joan Orr and Marshfield Broadcasting Company, Inc. is dismissed.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner filed comments one day late accompanied by a request to accept the comments. Petitioner stated he had been hospitalized due to an automobile accident and was unable to submit timely comments.

[2] Public Notice was given on January 27, 1988, Report No. 1709 (RM-6241).

[3] Mary Jane Kelley, as sole proprietor, assigned the construction permit for station WFXR(FM) to MayJay Broadcasting, Inc. Mary Jane Kelley is majority stockholder and President of MayJay Broadcasting, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-49

In the Matter of

Amendment of Section 73.202(b), RM-6541
Table of Allotments,
FM Broadcast Stations.
(Baton Rouge, Louisiana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 13, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. At the request of Vetter Communications Company, Inc. (petitioner), the Commission considers herein the *Notice of Proposed Rule Making*, 4 FCC Rcd 2189 (1989), proposing the substitution of Channel 264C for Channel 264C1 at Baton Rouge, Louisiana. The *Notice* also proposed the modification of the petitioner's license for Station WTGE-FM at Baton Rouge to specify operation on the higher powered channel. Petitioner filed supporting comments reaffirming its intention to construct the improved facilities.

2. We believe the public interest would be served by the substitution of Channel 264C for Channel 264C1 at Baton Rouge, Louisiana, providing that community with additional expanded FM service. Channel 264C can be allotted to Baton Rouge in compliance with the Commission's minimum distance separation requirements at the site specified by the petitioner, which is located 16.3 kilometers (10.1 miles) southwest of the community.[1]

3. As requested, we are herein modifying the license of Station WTGE-FM to specify operation on Channel 264C in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 20, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Baton Rouge, Louisiana	251C, 264C 268C, 273C

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Vetter Communications Company, Inc., for Station WTGE-FM, Baton Rouge, Louisiana, IS MODIFIED, to specify operation on Channel 264C in lieu of Channel 264C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The restricted site coordinates are 30-19-35 and 91-16-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-430

In the Matter of

Amendment of Section 73.202(b), RM-6778
Table of Allotments,
FM Broadcast Stations.
(Lost Creek, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by William and Patricia Allman, d/b/a AEL Broadcasting of West Virginia (petitioner), requesting the allotment of Channel 242A to Lost Creek, West Virginia. Petitioner states that it will apply for the channel, if allotted to Lost Creek, in order to provide that community with a first local FM service. The allotment can be made in compliance with the Commission's minimum distance separation requirements.[1]

2. Since the proposal is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner and other interested parties will be required to comply with the notification requirement of Section 73.1030(a) of the Commission's Rules. Petitioner states that it has taken the necessary steps to insure coordination with the National Radio Astronomy Observatory.

3. In view of the fact that Lost Creek, West Virginia, could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Lost Creek, West Virginia	---	242A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Forbes W. Blair, Esquire
Marjorie K. Conner, Esquire
Blair, Joyce and Silva
1825 K Street, N.W.
Suite 510
Washington, D. C. 20006
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The city reference coordinates are 39-09-36 and 80-21-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-431

In the Matter of

Amendment of Section 73.202(b), RM-6817
Table of Allotments,
FM Broadcast Stations.
(Alamo, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Charles C. Allen (petitioner), requesting the substitution of Channel 226C3 for Channel 226A at Alamo, Tennessee, and the modification of his construction permit for Station WNBE(FM) at Alamo to specify operation on the higher class co-channel. The proposal could provide the community with its first expanded FM service. Petitioner states he will promptly construct the improved facilities, if authorized.

2. Channel 226C3 can be allotted to Alamo in compliance with the Commission's minimum distance separation requirements at Station WNBE(FM)'s current transmitter site.[1] As requested, we shall propose to modify the construction permit for Station WNBE(FM) to specify operation on the higher class co-channel, Channel 226C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Alamo.

3. In view of the fact that Alamo, Tennessee, could receive its first wide coverage area FM station the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Alamo, Tennessee	226A	226C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Eugene T. Smith, Esquire
715 G Street, S.E.
Washington, D. C. 20003
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The transmitter site is located 8.6 kilometers (5.4 miles) southeast of the city. The coordinates are 35-43-31 and 89-03-25.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-433

In the Matter of

Amendment of Section 73.202(b), RM-6833
Table of Allotments,
FM Broadcast Stations.
(Arthur, North Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Regina Timmerman and Valotta Hazel Seibel ("petitioners") requesting the allotment of Channel 244A to Arthur, North Dakota, as the community's first local FM service.[1] Petitioners state that they will apply for the channel, if allotted.

2. Channel 244A can be allotted to Arthur in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2] Canadian concurrence in the allotment is required since Arthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. We believe the public interest would be served by proposing the allotment of Channel 244A to Arthur, North Dakota, since an interest has been expressed in providing the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Arthur, North Dakota	--	244A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Regina Timmerman
Valotta Hazel Seibel
P.O. Box 194
Arthur, North Dakota 58006
(Petitioners)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *S, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioners requested the allotment of Channel 296A. However, the allotment of Channel 296A at Arthur conflicts with the proposed substitution of Channel 296C3 for Channel 296A at Fosston, Minnesota (MM Docket 89-277). Therefore, we have substituted Channel 244A for consideration herein.

[2] The coordinates for this allotment are North Latitude 47-06-24 and West Longitude 97-13-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-440

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Texarkana, Arkansas)	RM-6763

NOTICE OF PROPOSED RULE MAKING

Adopted: September 18, 1989; Released: October 4, 1989

By the Chief, Allocations Branch:

1. At the request of State Line County Broadcasting Company (petitioner), the Commission has before it for consideration a petition for rule making seeking the substitution of Channel 292C2 for 292A at Texarkana, Arkansas. The proposal could provide Texarkana with expanded broadcast service.

2. A staff engineering analysis indicates that Channel 292C2 can be allotted to Texarkana, Arkansas, in conformity with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules.[1]

3. As requested, we shall propose to modify the license of Channel 292A to specify operation on Channel 292C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Texarkana.

4. In view of the fact that the requested upgrade could result in wider coverage, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Texarkana, Arkansas	292A	292C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel, or consultant as follows:

John A. Borsari, Esq.
Borsari & Kump
900 Seventeenth Street, N.W.
Suite 900
Washington, D.C. 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Ordee Pearson, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

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(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Reference coordinates used for Channel 292C2 at Texarkana, Arkansas, are 33-18-05 and 93-57-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

CORRECTED

MM Docket No. 87-28

In re Applications of

EDWARD ROYCE Stolz, II, tr/as ROYCE INTERNATIONAL BROADCASTING Station KWOD-FM Sacramento, California — File No. BRH-830719BD

For Renewal of License

and

WONG COMMUNICATIONS LIMITED PARTNERSHIP Sacramento, California — File No. BPH-831031AY

For Construction Permit for a New FM Station

Appearances

Richard S. Rodin, and *Marissa G. Repp*, on behalf of Royce International Broadcasting; *Stephen Diaz Gavin*, on behalf of Wong Communications Limited Partnership; and *Jerry M. Hermele* and *Paulette Laden*, on behalf of the Chief, Mass Media Bureau.

DECISION

Adopted: September 11, 1989 Released: October 6, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

Board Member ESBENSEN:

1. Before the Review Board are: (1) the *Initial Decision*, 4 FCC Rcd 1362 (ALJ 1989) (I.D.), of Administrative Law Judge Joseph Chachkin (ALJ), granting the application for renewal of license of KWOD(FM), Sacramento, California, licensed to Edward Royce Stolz, II (Stolz) tr/as Royce International Broadcasting (Royce), and denying the competing application for that frequency filed by Wong Communications Limited Partnership (Wong); (2) the contingent exceptions of Royce, and the exceptions of Wong and, (3) replies thereto filed by the Commission's Mass Media Bureau (Bureau) and by Royce.[1] Oral argument was heard on August 18, 1989. We have reviewed the I.D. in light of the foregoing documents, as well as the underlying record and the Board's oral argument. We affirm the ALJ, except as modified herein, and grant Royce's application for renewal of license.

BACKGROUND

2. This proceeding had its genesis over six years ago when Wong elected to file a competing application against the pending renewal application for Royce's facility, KWOD(FM), Sacramento, California. Wong, a purported "limited partnership," consists of Fay Wong, alleged as sole "General Partner," with a 60 percent equity interest, and Kin Shaw Wong, her brother, as the putative "Limited Partner," with a 40 percent equity interest (I.D., paras. 140-141). With respect to the Wong application, the ALJ observed:

> When Mr. Wong initially discussed with his advisors the filing of a competing application to KWOD, Mr. Wong was not aware that all the Sacramento FM stations were up for renewal. Instead, the focus was solely on KWOD (Tr. 502-503).
>
> Mr. Wong, who knew that Mr. Stolz was the owner of KWOD, had had a contractual agreement with Mr. Stolz to provide a SCA signal for Mr. Wong's background music business. That relationship was the subject of a lawsuit filed by Mr. Wong against Mr. Stolz, which lawsuit was pending in September 1983 when Mr. Wong decided to file this competing application. Mr. Wong admits that he was "angry" with the way Mr. Stolz had conducted his business towards Mr. Wong personally and that filing a competing application is a way to challenge Mr. Stolz's business (Tr. 503-506).

I.D., paras. 149-150. Wong has not disagreed with this characterization and did not file any exceptions with respect thereto. More critically, the ALJ determined that the "record overwhelmingly demonstrates" that Wong is a "sham" limited partnership "that has been controlled since its inception by its purported limited partner, Kin Shaw Wong . . . ." (I.D., para. 256). Ultimately, the ALJ determined that Royce was entitled to a renewal expectancy for meritorious license term performance, as well as preferences under both the best practicable service and diversification criteria (I.D., para. 259), rejected the Wong challenge, and renewed the license of KWOD(FM).

3. In its exceptions, Wong argues that: (1) the ALJ erred in failing to add issues concerning Stolz's integration pledge in an earlier proceeding; (2) the ALJ erred in not adding issues concerning alleged misrepresentation, lack of candor, and ineptness questions based on Stolz's conduct in unrelated proceedings; (3) the ALJ should have added issues in this proceeding regarding rule violations against Royce; (4) Royce should not be awarded a renewal expectancy because its issue-responsive programming "was broadcast at hours of minimal listenership"; (5) it was error for the ALJ to determine that Wong was a "sham"; and (6) the ALJ erred in awarding Royce integration credit and diversification preferences.

ROYCE INTERNATIONAL

A. EXCEPTIONS: QUALIFYING ISSUES

4. *Site Availability/Misrepresentation Issues:* Wong excepts to the ALJ's refusal to add qualifying issues against the incumbent licensee based upon Stolz's activities in unrelated prior proceedings held before this Commission. Wong asserts, for example, that on August 29, 1980, Royce filed an application for a new FM facility to serve Desert Hot Springs, California. Four other applicants filed competing applications proposing to serve Yucca Valley, California on that same frequency. When that proceeding came before the Board, in *Shoblom Broadcasting, Inc.*, 93 FCC 2d 1027 (Rev. Bd. 1983), the Board denied Royce's appeal of the presiding officer's refusal to accept Royce's amendment to change its proposed transmitter site. While the *Shoblom* ALJ declined to add misrepresentation or lack of candor issues against Royce, we commented in dicta that "it does appear that in specifying the Joshua Tree National monument site . . . and maintaining that specification . . . 'Stolz has [again] maneuvered as close to the perimeter as should be permitted' (*George E. Cameron, Jr. Communications*, FCC 83R-20, released March 23, 1983, at para. 52) . . . " 93 FCC 2d 1029-1030 n.4.[2]

5. Subsequently, on February 16, 1982, Cascade Broadcasting Group, Ltd. (Cascade) (an entity owned 66 2/3% by Stolz), filed an application for a new television facility at Caldwell, Idaho. There, the Board, in *TRC Communications, Inc.*, 59 RR 2d 92 (Rev. Bd. 1985), *review denied*, FCC 86-283, released June 9, 1986, *aff'd sub nom. Cascade Broadcasting Group, Ltd. v. FCC*, 822 F.2d 1172 (D.C. Cir. 1987), recalled again our comments regarding Stolz in *Shoblom*, and our statement that "[b]ut for the fact that TRC has easily prevailed under the standard comparative issue, we would remand this proceeding for further exploration of the reporting/ineptness issue against Cascade [and] we would have instructed the ALJ to take evidence on the alleged site availability, misrepresentations, or lack of candor by Stolz that are described in *Shoblom Broadcasting, Inc* . . . ." 59 RR 2d 95-96 n.3.[3]

6. Even later, on May 9, 1985, Silver State Telecasters (Silver State) (another applicant in which Stolz was the sole general partner), filed an application for a new television facility at Reno, Nevada (*see Washoe Shoshone Broadcasting*, MM Docket No. 85-293).[4] There, in response to a competitor's motion to enlarge issues, the ALJ (who also presided here), did add carelessness, ineptness, and misrepresentation issues against Silver State, based upon the Board's earlier footnoted comments in both *Shoblom* and *TRC*. The ALJ there reasoned that "[t]he Board's determinations [in *Shoblom* and *TRC*] make clear that substantial and significant questions have been raised . . . ." *Memorandum Opinion and Order (Washoe Shoshone)*, FCC 86M-928, released March 12, 1986.

7. Invoking those earlier proceedings involving Stolz, Wong here requested that cognate issues be added with respect to Royce/Stolz. However, in refusing to add these issues, ALJ Chachkin (who *had* added the issues in *Washoe Shoshone)* now determined:

> Wong now urges that the issues be added in the instant proceeding, citing *Allegan County Broadcasters, Inc.*, 83 FCC 2d 371, 373 (1980). However, *Allegan* does not mandate the addition of unresolved issues of misconduct. There the Commission noted that such allegations can be revisited in a future proceeding. Automatic designation of the subject issues is particularly inappropriate here in light of the factual record developed in discovery taken in *Washoe* [the Reno proceeding].
>
> Prior to dismissal of the [Silver State] application in *Washoe*, Stolz was deposed by the competing applicant which had raised in a motion to enlarge issues the same questions now raised by Wong. A copy of the deposition, which was appended to Royce's opposition, has been reviewed by the Presiding Judge. The Presiding Judge agrees with Royce that Stolz's testimony dispells any question of misrepresentation, lack of candor or pattern of misconduct on Stolz's part . . . . However, the question to be decided is whether there is justification for adding the requested issues. Wong's sole basis for addition of the issues requested is the Board's dicta in *Shoblom* and *TRC*. Stolz's explanation of the record in *Shoblom* and *TRC* resolves the questions raised by the Board in Stolz's favor. Wong has offered no evidence disputing Stolz's deposition testimony or demonstrating which testimony is not credible on its face. Under the circumstances, addition of the issues is without basis and Wong's request is denied.

Memorandum Opinion and Order, FCC 87M-1423, released June 25, 1987 (at paras. 4-5). In other words, while this same ALJ *had* added the subject issues against Stolz in *Washone Shoshone*, his review of Stolz's later deposition there persuaded him that no significant and material questions relating to Stolz's conduct in those earlier proceedings remained for further exploration. Thus, the ALJ was convinced that Stolz's deposition testimony, unchallenged there or here in any respect, was both plausible and credible.

8. Having reviewed the concerns expressed in *Shoblom* and *TRC*, we find that the ALJ's treatment of this matter was satisfactory. When we made our remarks in *Shoblom* and *TRC*, and when the ALJ added the issue in *Washoe Shoshone* based upon our comments, Stolz had not fully explained his prior conduct (since no formal opportunity for him to do so had arisen). Thus, neither the Board nor the ALJ had heard Stolz's version of the events that had raised questions as to Stolz's conduct in those earlier proceedings. However, in the case at bar, the ALJ carefully reviewed Stolz's *Washoe Shoshone* deposition testimony, found his explanation credible, and resolved not to add an issue. Indeed, neither before the ALJ, nor in its instant exceptions, has Wong proffered any evidence whatever to contradict Stolz's explanation. Pursuant to 47 C.F.R. §1.229(d), Wong had the burden of raising a substantial *prima facie* question, based upon specific factual allegations, to support the requested issue. In light of Stolz's unrefuted explanations, contained in his sworn deposition testimony, Wong has failed to provide an adequate basis for issue enlargment. *See William S. Daughtery, III*, 4 FCC Rcd 2605, 2606 (Rev. Bd. 1989) (and cases cited therein); *Tucson Community Broadcasting, Inc.*, 2 FCC Rcd 2860 (Rev. Bd. 1987). Here, apart from citing back to us our own preliminary dicta, Wong has thus advanced no factual or legal basis for reversing the ALJ's carefully considered judgment. Having ourselves

reviewed this record closely, and in the complete absence of evidence challenging Stolz's deposition testimony in *Washoe Shoshone*, the Board is without a predicate for finding that substantial and material questions of fact remain for evidentiary hearing on the matter of Stolz's conduct in those prior cases.[5].

9. *Royce's Violations of Commission Rules*: Wong excepts to the ALJ's ruling refusing to admit evidence concerning Royce's violation of certain technical rules in the operation of KWOD(FM) and a companion auxiliary broadcast facility. *See* Tr. 165. Wong claims that it was entitled to present evidence to demonstrate that these rule violations either reduced or wholly vitiated Royce's renewal expectancy. (Wong Exceptions para. 26).

10. On February 24, 1983, members of the Commission's Livermore, California Monitoring Station (Field Operations Bureau) inspected Station KWOD (FM) and Auxiliary Broadcast Station WBG-626 licensed to Royce at Sacramento, California. As a result of that investigation, a Notice of Apparent Liability for $10,000 was issued to Royce on March 22, 1984. Royce was informed that it was found to have violated 47 C.F.R. §73.317(a)(14) (spurious emissions), and 47 C.F.R. §73.1570(b)(2) (overmodulation), and that it had operated at an unauthorized tower height from February 16, 1984 to May 4, 1984, with respect to KWOD (FM). In its operation of Auxiliary Broadcast Station WBG-626, Royce was found to have violated 47 C.F.R. §74.532(d) (operation contrary to authorization) and 47 C.F.R. §74.551(A)(3) (relocation of auxiliary station transmitter prior to filing application).

11. Royce actively contested and appealed the Notice of Apparent Liability, generally contending that it did not "willfully or intentionally violate the Commission's Rules, that its mistakes were based on "inaccurate advice from other parties," and that the errors "were corrected promptly" once it was advised of the violations. Royce's appeals were unsuccessful before the Commission, but it had asserted early in this proceeding that it intended to contest the forfeiture in federal district court pursuant to the trial *de novo* option automatically available under Section 504 of the Communications Act, 47 U.S.C. §504(a).[6]

12. At hearing, the Bureau contended that because Royce was contesting the forfeiture in court pursuant to 47 U.S.C. §504(c),[7] the Notice was irrelevant. The ALJ agreed that, given that Royce was availing itself of its appeal rights in federal district court, the outstanding rule violation notice was not probative and the matter irrelevant to the comparative hearing. He also observed that, even if Royce's forfeiture was not under appeal, the technical violations would not necessarily be relevant under Commission precedent because there was no showing of frequent or sustained violations.

13. Royce claims that the ALJ's ruling should be sustained because not only was the matter under appeal and subject to a district court trial *de novo*, but violations of technical rules may impact a renewal only when they are of "extreme duration and severity," citing *United Broadcasting Co. v. FCC*, 565 F.2d 699 (D.C. Cir. 1977). Royce further avers that, even if the Notice (and related correspondence) were admitted into evidence, Royce's strong renewal expectancy would not be diminished in any decisional degree. Finally, Royce claims that, in any event, the matter has now been "mooted because subsequent to the issuance of the I.D., Royce entered into a settlement agreement on the monetary forfeiture in which: (1) the government withdrew its claims of technical violations; (2) the parties agreed that no admission of any liability was made with respect thereto; and, (3) Royce paid the sum of $6,500 (Royce Reply to Exceptions at 17).

14. Having taken official notice of the numerous documents concerning Royce's rule violations, the Board concludes that the record here need not be reopened, or the proceeding remanded to the ALJ, for further hearing on these technical rule violations. Royce does not deny the violations; it has always claimed only that these violations were "unintentional." (*But see* 47 U.S.C. §312(f)(l) ("willful" does not require proof of "intent" to violate rules)). However, and in any event, the subject violations were neither serious nor prolonged (*compare Cowles, supra* (serious violation of main studio rule does not vitiate renewal expectancy)), and Royce has paid the price of its violations. In view of the nature of the violations and the forfeiture satisfaction, we find no error in the ALJ's disposition of this matter. *Cf. Second Further Notice of Inquiry and Notice of Rule Making*, 3 FCC Rcd 5179, 5195-96 (1988)(Commission indicates "perfect compliance" is not required; for rule violations to be considered at renewal, they must be "serious" and/or "numerous.").

15. *Stolz's Integration Proposals*: Wong excepts to the ALJ's refusal to add a specific misrepresentation issue against Royce arising from Stolz's integration proposal made in 1980 when he was seeking the authorization for KRCK(AM), Burbank, California. Given that 1980 pledge, Wong faults the award of part-time integration credit to Stolz here. In the 1980 proceeding, Stolz avowed that he would devote full-time to the operation of the Burbank AM facility, move his residence from Sacramento to Burbank, and hire a General Manager for KWOD(FM). Wong claims that Stolz later reaffirmed that 1980 commitment in the Citrus Heights, California proceeding, where Stolz declared that "after a minimum of three years of full-time integration at applicant's standard broadcast facilities at Burbank, California," he would integrate full-time into the proposed Citrus Heights facility. Next, in the Reno, Nevada proceeding, Stolz stated that if the Citrus Heights application was denied (which it was), he would work at the Reno facility after the same 3-year hiatus.

16. However, Wong further argues that, in the instant proceeding, it was demonstrated that Stolz "never intended" to effectuate his integration commitment made in the Burbank, California proceeding (Wong Exceptions at 3), would not relocate to Burbank (Tr. 241-242), and would hire a full-time manager for Burbank (Wong Exceptions at 6). Royce and the Bureau both opposed the addition of this specific misrepresentation issue, asserting that Wong's motion was, *inter alia*, untimely, and unsupported by evidence of intentional misrepresentation or lack of candor in this regard.

17. We find no error in the ALJ's refusal to add mispresentation issues against Royce arising from Stolz's integration pledges. The ALJ opined (*Memorandum Opinion and Order*, FCC 88M-1035, released April 15, 1988; footnote omitted; emphasis added):

> It is well settled that a motion to reopen the record must be based on newly discovered evidence that the petitioner could not have known or learned with due diligence at the time of hearing and which

evidence would affect the ultimate decision. Moreover, only upon a showing of unusual and compelling circumstances will a record be reopened and issues enlarged. *KFPW Broadcasting Co.*, 44 FCC 24 310, 311 (1973); *The News-Sun Broadcasting Co.*, 27 FCC 2d 61 (1971); *West Central Ohio Broadcasters, Inc.*, 4 FCC 2d 934 (Rev. Bd. 1966). Wong's "evidence" is based on the hearing testimony of Edward Stolz which was elicited by counsel for Wong during cross examination. It is clear from the record that counsel for Wong had knowledge of the "evidence" (Tr. 113-143). Even if that were not the case, the facts, all in the public record, could have been discovered at an earlier time without the slightest difficulty. Assuming, *arguendo*, that the "evidence" was discovered during the November 30, 1987, hearing session, Wong's enlargement motion would still be untimely, having been filed nearly two months after that date. *See* Section 1.229 of the Commission's Rules.

Furthermore, Wong's allegations are not of decisional significance. Wong's allegations concern Stolz' proposal made in May 1980 to work full-time at KRCK(AM) in Burbank. In this proceeding, some eight years later, Stolz appeared to indicate that he no longer intends to work at the Burbank station on a full-time basis. In this regard, Stolz stated that he intends to delegate many of the management activities to a full-time manager (Tr. 152). *However, the fact that Stolz may have now abandoned his Burbank integration proposal does not support Wong's claim for a misrepresentation issue. Wong has produced no evidence suggesting that Stolz did not intend to carry out his Burbank integration proposal at the time it was made.* Although Stolz' intentions with regard to Burbank may be relevant in assessing the credit to be accorded to Royce's integration proposal, there is no basis for a misrepresentation issue.

18. We adopt the ALJ's conclusions in this regard, and deny Wong's exceptions with respect to alleged misrepresentations arising from the prior integration pledges of Stolz. As the ALJ emphasized, in addition to the unjustified lateness of Wong's motion, the absence of any demonstrated intent to deceive by Stolz *at the time he made his original integration proposal*, renders Wong's request for a further hearing unsubstantiated. *See Armando Garcia*, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988), *rev. denied*, 3 FCC Rcd 4767 (1988)(substantial evidence of deceptive intent is the *sine qua non* of a misrepresentation issue); *accord Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983); *Kaye-Smith Enterprises*, 17 FCC 2d 1402, 1415 (1979).

19. With respect to Stolz's instant integration proposal for KWOD(FM), the record here reveals that "Mr. Stolz presently works full-time splitting his time between stations KWOD-FM and KRCK(AM)."[8] (Wong Exh. 6, at 2) The ALJ thus concluded (I.D., para. 255):

> Mr. Stolz proposes to work full-time (40-50 hours a week) at KWOD and full-time (40 hours) at KRCK, Burbank, upon completion of construction of that facility. Only part-time integration credit can be awarded. The Commission has repeatedly made clear that it will not credit 80-hour work weeks or proposals to maintain two full-time jobs. *Caldwell Broadcasting Corp.*, 100 FCC 2d 115 (Rev. Bd. 1985), *rev. granted in part on other grounds*, 104 FCC 2d 438 (1986); *Kennebec Valley Television, Inc.*, 1 FCC Rcd 1240, 1242 (Rev. Bd. 1987); *Cuban-American Ltd.*, 2 FCC Rcd 3264, 3269 (Rev. Bd. 1987). Mr. Stolz is entitled to receive credit for 30 hours a week. Mr. Stolz's past practice of spending 60-90 hours per week since the inception of KWOD managing that facility (Tr. 124, 128) provides strong evidence that a 30 hour commitment to KWOD is fully capable of effectuation. Further, Mr. Stolz's intention to maintain his full-time residence in Sacramento buttresses that assessment. Finally, the fact that Mr. Stolz will, on some weeks, spend only three days in Sacramento does not preclude the proposed 30 hours quantitative integration credit. *See Omaha TV 15, Inc.*, FCC 88-371, released December 19, 1988.

20. Royce, we note, has not excepted to the ALJ's award of only part-time integration credit to Stolz. Wong excepts to the award of any such integration credit, based upon Stolz's alleged misrepresentation arising from his 1980 pledge. While Stolz did promise in 1980 to integrate full-time into his Burbank facility, it is apparent that that station has never been constructed, nor, of course, become operational. Consequently, there has been no Burbank station for Stolz to manage. Nonetheless, he has promised to continue his attempt to construct that facility, has apparently obtained extensions of time for his construction permit, and has vowed to personally be present there to assist in management. Despite Stolz's claim to 80-hour work weeks, we agree with the ALJ that Stolz cannot be here awarded full-time integration credit, while claiming at the same time that he will "integrate" personally into the Burbank station, if and when that station becomes operational. As reiterated in *Kennebec Valley Television, Inc.*, 2 FCC Rcd 1240, 1242 (Rev. Bd. 1987), "the Commission will not credit 80-hour work weeks or proposals to maintain two full-time jobs." *See also Caldwell Broadcasting Corp.*, 100 FCC 2d 115 (Rev. Bd. 1985), *rev. granted in part on other grounds*, 104 FCC 2d 438 (1986); *Cuban-American Ltd.*, 2 FCC Rcd 3264, 3268-3269 (Rev. Bd. 1987); *compare Bradley, Hand, and Triplett*, 89 FCC 2d 657 (Rev. Bd. 1982)(50-60 hour work week credited) with *Berryville Broadcasting Co.*, 70 FCC 2d 1 (Rev. Bd. 1978)(no full-time credit where applicant proposed 70-hour work week). We accord with the ALJ's reduction of Stolz's proposed integration credit for KWOD(FM), and leave it at that.

B. EXCEPTIONS: RENEWAL EXPECTANCY

21. Having dealt with Wong's exceptions which challenge Royce's basic qualifications, we turn to Royce's license term performance and Wong's exceptions pertaining to the ALJ's award of a strong renewal expectancy to Royce. Under Section 309(e) of the Communications Act, 47 U.S.C. §309(e), a comparative hearing is required when two or more applications for a broadcast license are mutually exclusive. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 333 (1945). (Although *Ashbacker* dealt with two mutually exclusive applications for a new construction permit, the court has interpreted *Ashbacker* to require a hearing for two or more mutually exclusive applications in the comparative renewal context as well. *Citizens Communications Center v. FCC*, 447 F.2d 1201, 1211 (D.C. Cir.

1971), *clarified*, 463 F.2d 822 (D.C. Cir. 1972)). The basic elements upon which evidence at a comparative hearing is taken were established in the Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965). These elements were originally devised for comparing applicants for new licenses, but were subsequently applied, in terms of the introduction of evidence, to compare incumbent licensees with new challenging applicants. The principal factors set forth in the *Policy Statement*, or added subsequently, are (1) diversification of control and (2) best practicable service to the public, which includes integration of ownership and management (with possible enhancements for local residence, civic activities, broadcasting experience, and female or minority participation), and efficient use of the frequency.

22. In addition to being evaluated on these comparative factors, an incumbent licensee may be awarded a renewal expectancy if it is demonstrated that the licensee's past service to its community of license has been "meritorious." To achieve meritorious service sufficient for the award of a renewal expectancy, an incumbent licensee must show that its past record has been "substantial"; that is, "sound, favorable and substantially above a level of mediocre service which might just warrant renewal." *Cowles Broadcasting, Inc.*, 86 FCC 2d 993, 1006 (1981) (*Cowles II*), *aff'd sub nom. Central Florida Enterprises, Inc. v. FCC.*, 683 F.2d 503 (D.C. Cir. 1982), *cert denied*, 460 U.S. 1084 (1983) (*Central Florida*). A renewal expectancy is apportioned on a sliding scale, measured in accordance with the strength of the licensee's past broadcast record, and is given primary weight in the decision making process *vis-a-vis* the other comparative criteria. *See Cowles II*, 86 FCC 2d at 1015 ("structural factors such as integration and diversification -- of primary importance in a new license proceeding --should have lesser weight compared with the preference arising from substantial past service"). *See also Third Further Notice of Inquiry, Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, FCC 89-109, released August 16, 1989. In determining renewal expectancy on a case by case basis, the Commission has looked at such factors as (1) the amount of non-entertainment programming presented, (2) the time of day it is presented and whether it is directed to local needs and interests, (3) the amount of locally produced programming,and (4) the reputation of the station in the community. *Radio Station WABZ, Inc.*, 90 FCC 2d 818, 840-42 (1982), *aff'd sub nom. Victor Broadcasting v. FCC*, 762 F.2d 756 (D.C. Cir. 1983). *See also Simon Geller*, 90 FCC 2d 250 (1982)(subsequent history omitted). Similarly, the Board recently observed that the following factors have been considered in prior renewal cases: (1) the licensee's efforts to ascertain the needs, problems and interests of its community;(2) the licensee's programmatic response to those ascertained needs; (3) the licensee's reputation in the community for serving the needs, problems and interests of the community; (4) the licensee's record of compliance with the Communications Act and FCC rules and policies; and (5) the presence or absence of any special effort at community outreach or towards providing a forum for local self-expression. *Seattle Public Schools*, 4 FCC Rcd 625, 637 (Rev. Bd. 1989).

23. In his I.D., the ALJ extensively details Royce's past performance in the operation of KWOD(FM) in some 120 paragraphs of specific findings (I.D., paras. 18-138). These minute findings need not be extensively rehearsed here; however, we believe that the ALJ's conclusions are appropriate and accurately describe the record developed below.[9] Specifically, the ALJ concluded (I.D., paras. 249-253; footnote omitted):

> Royce's record during the 1980-1983 license term was substantial, meritorious and warrants a license renewal preference. In this connection, Royce has ascertained the needs of Sacramento and the region in an exemplary, continuing and thorough manner . . . . Moreover, Royce matched its thoroughgoing ascertainment efforts by broadcasting programs "that [were] particularly responsive to community needs" and that provided forums for local community leaders and the discussion of community problems." *See Cowles Broadcasting, Inc.*, [86 FCC 2d 993] at 1007 [1981].
>
> * * *
>
> KWOD also carried a plethora of public affairs and non-entertainment programs that were not locally produced but nevertheless were responsive to ascertained community needs. In addition, KWOD has regularly broadcast news, sports and weather programs for which KWOD employed a local newscaster and sportscaster in addition to its broadcast of network national news. Further, KWOD has broadcast an extraordinary high number of PSA's throughout the license term (at least 26,280 PSA's between 1980-1983) for some 566 different local, regional, state and national organizations. The effectiveness of KWOD's PSA programming is demonstrated by the many laudatory expressions of gratitude made by organizations served by KWOD's PSA broadcasts.
>
> In addition to its responsive programming, KWOD has not only "developed community ties," but through its promotional and charitable efforts has made "outstanding contributions to the local community." *See Cowles Broadcasting, Inc.*, 86 FCC 2d at 1007, 1016 . . . . Such community service by a licensee is a positive factor in determining whether it has provided meritorious service warranting a renewal expectancy. *See United Broadcasting Co., Inc.*, 100 FCC 2d 1574, 1580, 1581 (1985); *Intercontinental Radio, Inc.*, 98 FCC 2d 608, 642-643 (Rev. Bd. 1984); *Victor Broadcasting, Inc.*, 722 F.2d [756] at 762 [(D.C. Cir. 1983)].
>
> The Commission has stated that the most reliable index of a given licensee's public interest record is "its reputation and standing in the local community." *Knoxville Broadcasting Corp.*, 59 RR 2d 1617, 1637 (1986). This is the best gauge for evaluating a licensee's past performance. The record here of public witness affidavits, unsolicited letters and commendations demonstrates that KWOD enjoys the highest regard in its community. Seventeen public witnesses submitted affidavits on behalf of KWOD. Moreover, 23 unsolicited letters of praise and 4 commendations were introduced into the record. KWOD's reputation is unblemished. No letters have been received by the station that reflect unfavorably on KWOD, nor were any dissatisfied public witnesses introduced.

24. Wong finds fault with the ALJ's appraisal of Royce's extensive past performance record in only two respects: (1) that some of the lengthier non-entertainment programs were broadcast by KWOD(FM) on Sunday mornings; and (2) that four of the thirty-six different news and non-entertainment programs regularly broadcast by KWOD(FM) during the license term included some "entertainment features." (Wong Exceptions, paras. 33-38.)

25. In response, Royce argues that Wong's attempt to assert its programming judgment for that of Royce's "will not be entertained by the Commission absent a specific showing that the licensee could not reasonably expect that the broadcast would be effective," citing *National Broadcasting Co.*, 47 FCC 2d 803, 806 (1974), and *Kaye-Smith Enterprises, Inc.*, 98 FCC 675, 684-85 (Rev. Bd. 1984). Royce Reply at 6, n. 4. Moreover, Royce claims that Wong does not except to the ALJ's determination that "KWOD aired many public affairs and public service programs at times other than early morning when listeners would appreciate such programming at a later time period." (Royce Reply at 6). Nor does Wong acknowledge KWOD(FM)'s practice of "airing a minimum of one public service announcement per hour throughout the entire license term for a total of at least 26,280 such announcements." I.D., paras 36-37.[10] In addition, Royce adds that Wong ignores the licensee's "exemplary, continuing and thorough" ascertainment efforts, KWOD's community service, and "the most reliable index of a given licensee's public interest record," its reputation in the local community. Royce further observes that the record reflects that Wong failed to present a single witness or other evidence uncomplimentary of KWOD(FM)'s performance (Royce Reply at 6-7.)

26. We agree with the ALJ that Royce's performance during 1980-83 license term demonstrates that the licensee: (1) conducted throughgoing ascertainment efforts, supplemented by extensive community involvement; (2) regularly broadcast a schedule of news, weather, sports, and public affairs programs and announcements responsive to those ascertained needs and interests; (3) provided an effective forum for community members and leaders; (4) assisted the Sacramento community in promoting organizing, and supporting community and charitable goals; and (5) maintained an excellent reputation in the community, unblemished here by criticism. We incorporate by reference the ALJ's findings of fact (with which Wong raises no serious exception), and hold that KWOD(FM) has demonstrated a "positive and dedicated commitment to serving its service area," and its record (as set forth in the I.D. at paras. 18-138) is "sound, favorable and substantial." Royce has duly earned a strong renewal expectancy. *See, e.g., Broadcast Communications, Inc.*, 93 FCC 2d 1162, 1169 (Rev. Bd. 1983), *aff'd in relevant part*, 97 FCC 2d 61 (1984), *aff'd by judgment sub nom. Genesis Broadcasting Ltd. v. FCC*, 759 F.2d 969 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 946 (1985).

27. When a renewal applicant's performance record is strong, the structural factors of integration and diversification alone do not outweigh a proven meritorious record. *Intercontinental Radio Inc.*, 98 FCC 2d 608 (Rev. Bd. 1984) (substantial performance record outweighs challenger's diversification preferences and slight integration preferences), *modified on other grounds*, 100 FCC 2d 817 (1985); *Kaye-Smith Enterprises*, 98 FCC 2d 675 (substantial performance record, although burdened with slight demerit, outweighs challenger's diversification and integration preferences); *Pillar of Fire*, 99 FCC 2d 1256 (Rev. Bd. 1984) (substantial performance record of incumbent outweighs challenger's slight to moderate diversification and moderate integration preferences); *Tele-Broadcasters of California, Inc.*, 58 RR 2d 223 (Rev. Bd. 1985) (substantial performance record outweighs challenger's slight diversification and slight integration preferences); *United Broadcasting Co.*, 100 FCC 2d 1574 (1985) (substantial performance record, although blemished with slight demerit for past misconduct, outweighs one challenger's substantial diversification, moderate integration and slight auxiliary power preferences, as well as another challenger's substantial diversification preference); *Cf. also Comparative Renewal Process and Prevention of Abuses of the Renewal Process*, 3 FCC Rcd 5179, 5196-97 (1988)(reaffirming policy need for renewal expectancy for meritorious service).

28. Despite our view that Royce is entitled to a strong renewal expectancy, and would prevail over Wong even if we granted all of Wong's exceptions as they pertain to its own application, we will review the I.D. and the decisional exceptions with respect to Wong.

WONG COMMUNICATIONS

29. While it is not necessary to revisit each of the extensive findings of the ALJ concerning Wong's "sham" application contained in some 90 paragraphs of the I.D.(at paras. 147-238), some of the more salient determinations are below highlighted to demonstrate the accuracy of the ALJ's fatal assessment of Wong.

30. Kin Shaw Wong is the older brother of Fay Gum Wong. The two are the sole principals of the challenging applicant. The initial plan for the Wongs to apply for an FM station in Sacramento to compete against the renewal application of KWOD was developed by Mr. Wong and his personal advisors: Mr. Williams (Mr. Wong's consulting engineer) and Richard C. Rowlenson (Mr. Wong's Washington FCC counsel). Ms. Wong, on the other hand, was not a participant in the initial discussions between her brother and his two advisors, during which discussions the application plan was developed (Tr. 500-502, 511-513)(I.D., paras. 147-148). Ms. Wong's only conception of the Sacramento radio market prior to filing the Wong application was provided by her by brother (Tr. 330), and Ms. Wong believes that Mr. Wong perhaps derived his plan during the pendency of his lawsuit against Stolz (Tr. 336-337). She volunteered at hearing that, at that time, she was unfamiliar with the Sacramento radio market, was not familiar with the operation of KWOD(FM), did not know Stolz, and was equally ignorant about KWOD(FM)'s programming, and had never listened to KWOD(FM). Indeed, Ms. Wong conceded that she did not even know what frequency Wong applied for (I.D., paras. 151-152).

31. Upon advice of counsel, Mr. Wong decided that the Wong Sacramento FM challenger would take the form of a limited partnership, and he alone determined the ownership percentages of the two "partners." FCC counsel, Rowlenson, explained to Mr. Wong the Commission's comparative criteria, the application process (Tr. 509-510), and advised that Mr. Wong's ownership of an AM station in that same market would be a serious obstacle *vis a vis* Royce in the comparative consideration of an application for a new FM station in the same market. Thereafter, Mr. Wong proposed to his sister that

she be the "general partner" (Tr. 355), and that she hold a 60 percent interest and that he would hold a 40 percent interest. Mr. Wong explained that she should be the listed as the "general partner" to "make the application more attractive to the FCC" (Tr. 355-356) because she would be a "female minority" general partner (Tr. 357). Indeed, Ms. Wong admitted that the entire Wong enterprise was set up from the very beginning to improve their comparative position in this proceeding (Tr. 464)(I.D., paras. 153-156).

32. The record reflects that Mr. Wong engaged Williams, with whom he had worked before on various radio-related matters, to prepare the engineering portion of the Wong application. Ms. Wong relied completely on her brother to prepare the engineering portion of the Sacramento application in conjunction with Williams, including the selection of an antenna site, as well as all matters relating to the physical plant (Tr. 365-369). Ms. Wong never met Williams before the application was filed (Tr. 369-370), relying instead on Mr. Wong's assurances that the engineering was in order (Tr. 372-373). Ms. Wong never asked either her brother or Williams about engineering matters prior to the filing of the application, and she did not question her brother or Williams as to whether either had obtained a transmitter site (Tr. 371). Ms. Wong, in fact, both at the time of the filing, and for at least two years thereafter, did not even know the location of the transmitter site proposed in the application (Tr. 370-372). When Ms. Wong certified the application, she "didn't look very carefully at the engineering section," nor was she certain that it was even appended to the application (Tr. 381-382). Further, Ms. Wong does not recall if she ever spoke with Rowlenson prior to the filing of the application (Tr. 375), though the record reflects that she had never met Rowlenson before filing, and was not questioned about responses to be made to specific questions in the application by Rowlensen (Tr. 385). Ms. Wong did not participate in the drafting of any part of the application (Tr. 377); indeed, she could not recall whether the completed draft of the application came directly to her from Rowlenson, or whether it came from her brother (Tr. 377). However, we note that the Wong application listed Mr. Wong's home address as the applicant's address (Royce Ex. 8; Tr. 382-383).

33. Similarly, Ms. Wong did not supply any information concerning the financial qualifications of Wong (Tr. 388), but accepted her brother's oral estimate as to the cost for constructing and operating the station for three months (approximately $200,000), based upon a business plan he had for his proposed AM station at Citrus Heights, California (Tr. 389, 392). She also accepted his assurances that such funds would be forthcoming from his own personal assets, as well as those of their father and from Mr. Wong's father-in-law (I.D., para. 174).

34. With respect to Wong's proposed programming, the application (FCC Form 301, Exhibit 4) claimed that "[t]he Wongs have evaluated, on an on-going basis, the problems, interests and needs of Sacramento and its surrounding communities," yet Ms. Wong admitted that she had not in fact done so (Royce Ex. 8; Tr. 398). Nor did she question that representation with either her brother or Rowlenson before she certified the application (Tr. 398-399). Moreover, Ms. Wong had no input into the preparation of Wong's Exhibit 5 ("Applicants Proposed Equal Employment Opportunity Program") (Royce Ex. 8; Tr. 403). Although listed as responsible for its implementation, Ms. Wong was not consulted about Wong's EEO program before it was drafted. (Royce Ex. 8; Tr. 403, 405-406). In point of fact, these specific items were included solely by Rowlenson, without any input from either Wong (I.D.,paras. 177-179).

35. The record further reflects that: (1) Mr. Wong paid all the expenses for the preparation and filing of the Wong application; (2) Williams, the consulting engineer, sent his bill directly to Mr. Wong, who personally paid Williams (Tr. 521); (3) Mr. Wong received Rowlenson's bills directly, paid them, and has not been reimbursed by the partnership, (4) Ms. Wong has no obligation to supply any additional funds over and above her $6.000 contribution, regardless of the costs for prosecution of the application or for the construction and three months' operation of the station; (5) the oral arrangement between the Wongs is that Mr. Wong will provide whatever additional funds that are needed for the prosecution of the application (Tr. 482-483); and (6) there is no limit set on the amount of funds which Mr. Wong is required to provide (Tr. 483).

36. Despite the fact that, until hearing, Mr. Wong had been primarily responsible for the preparation and prosecution of the application, Wong contends that once the station is constructed, Mr. Wong will have "nothing further to do with it" (Tr. 486). However, the record evidence conclusively belies this claim. For example, Ms. Wong expects to consult with Mr. Wong whenever she needs advice concerning the operation of the station (Tr. 479), and she also will seek his assistance for the construction of the station (I.D., paras. 234-235). Mr. Wong, who has some "experience" relating to broadcasting as a result of his application for an FM station in Redding, California, and as permittee for KPTO(AM), expects that his sister would "accept" and "value" his advice concerning the operation of the station (Tr. 569-57). As he admitted, it would "make a greal deal of sense from a businss point of view" for him to offer advice to Ms. Wong in those areas, and that Ms. Wong, who has "has good business sense," presumably "would accept [Mr. Wong's] advice" (Tr. 569-571). Thus, if Ms. Wong chose to provide a religious format for the FM station, which would be the same format presently planned by her brother for his Citrus Heights station, Mr. Wong would certainly "make very strong comments" against that decision and he would expect his sister to take his opinion into strong consideration (Tr. 585-586). He would also periodically meet with Ms. Wong to "discuss" the operation, and would periodically review the station's books (I.D., para. 236). As a matter of fact, if the Wong's were awarded the FM construction permit at issue here, the FM facility would, in many respects, be operated *jointly* with Mr. Wong's proposed Citrus Heights AM station. For example, the two stations would "most likely" share the same building for their administrative offices, would share the same bookkeeper and accountant, would share the same consulting engineer and chief engineer, and the same traffic manager. While uncertain about co-location of the studios, Mr. Wong said that, if it appeared economical and technically feasible to co-locate the AM and FM studios, he would make a "strong suggestion" that the studios be joined (Tr. 578, 593-594).[11] Incredibly, Mr. Wong acknowledged that if the FM station is granted to Wong, that station and his AM station would avoid competing with each in the Sacramento market but *would " cooperate " in their sales efforts*. This "cooperation" would be

accomplished, for instance, by devising "restricted sales territories" to minimize competition (Tr. 587), and the sales forces of each of the two stations would refer interested advertisers to the other station if the advertiser was "uninterested" in advertising on one particular station. If an advertiser chose to advertise on both stations, Mr. Wong would propose a joint discount(Tr. 592)(I.D., paras. 237-238). Wong claims in its exceptions that in April 1987 (just prior to the pre-hearing conference in this proceeding, *see* I.D., para. 3) the Wongs again "discussed the matter but they had decided that it was best to keep the ventures separate" (Wong Exceptions at para. 69).

37. In view of all of the foregoing, the Board affirms the ALJ's specific conclusion that:

> Wong L.P. will be given no integration credit. The record overwhelmingly demonstrates that Wong L.P. is a "sham" limited partnership that has been controlled since its inception by its purported limited partner, Kin Shaw Wong, Ms. Wong's older brother, without any meaningful involvement by Ms. Wong, its purported general partner. Mr. Wong launched this enterprize, controlled all aspects of the preparation and prosecution of the application, handled all financial and technical matters, put at risk tens of thousands of dollars of his own funds and controlled vital partnership activities. Moreover, Mr. Wong will continue his investment in Wong L.P. during the construction and operation of the station, if the application is granted. Under these circumstances, case precedent clearly requires that no integration credit be awarded to Wong L.P. for Ms. Wong's proposed role of general manager. *See KIST Corp.*, 102 FCC 2d 288 (1985), *affirmed*, 801 F.2d 1436 (D.C. Cir. 1986); *NEO Broadcasting Co., 103 FCC 2d 1031 (Rev. Bd. 1986)* ; *Payne Communications, Inc.*, 1 FCC Rcd 1052 (Rev. Bd. 1986) . . . .

I.D., para. 256 (footnotes omitted).

38. In its exceptions, Wong merely argues that the ALJ in so concluding "totally ignored evidence of the background and ability of Fay Wong . . . to manage a business." (Wong Exceptions at para. 39). More to the point, however, the salient consideration here is that it is beyond dispute from this record that the Wong application has, throughout, been controlled by its putative "limited partner," Kin Shaw Wong, and not by his sister, whose candid admissions concerning her minimal role in the enterprise glaringly demonstrate the false portrayal of the putative Wong ownership structure. Not only has she not fulfilled the role of the "general partner," the record makes clear that Mr. Wong was never the mere "passive investor" claimed by the applicant. *See Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part and denied in part*, 58 RR 2d 604 (1985), *further recon. granted in part and denied in part*, 1 FCC Rcd 802 (1986). Rather, he was progenitor and prime-mover, using his sister as no more than a weak prop to further his own ambitions. Wong, of course, is not the first applicant to seek to exploit the Commission's comparative process through the disingenuous proffer of a sham ownership structure. *See, e.g., KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984), *modified*, 102 FCC 2d 288 (1985); *affirmed by judgment sub nom. United American Telecasters, Inc. v. FCC*, 801 F. 2d 1436 (D.C. Cir. 1986); *NEO Broadcasting Co.*, 103 FCC 2d 1031 (Rev. Bd. 1986), *review denied*, 1 FCC Rcd 380 (1986); *Pacific Television Ltd.*, 2 FCC Rcd 1101 (Rev. Bd. 1987), *review denied*, 3 FCC Rcd 1700 (1988); *Tulsa Broadcasting Group*, 2 FCC Rcd 6124 (Rev. Bd. 1987), *review denied*, 3 FCC Rcd 4541 (1988), *dismissed*, No. 88-1646 (D.C. Cir., filed Jan. 9, 1989); *Jarad Broadcasting Co., Inc.*, 1 FCC Rcd 181 (Rev. Bd.), *recon. denied*, 1 FCC Rcd 1267 (Rev.Bd. 1986), *review granted in part and denied in part*, 2 FCC Rcd 6080 (1987), *aff'd by judgment sub nom. Spectron Broadcasting Corp. v. FCC*, 858 F.2d 774 (D.C. Cir. 1988); *Magdalene Gunden Partnership*, 2 FCC Rcd 5513 (Rev. Bd. 1987), *recon denied*, 3 FCC Rcd 488 (Rev. Bd. 1988) *review denied*, 3 FCC Rcd 7186 (1988). And, it is unlikely, alas, that it will it be the last. But for the fact that we find that Royce's renewal expectancy would defeat Wong's challenge, even if Wong was a *bona fide* applicant, we would remand this case for misrepresentation and/or real-party-in-interest issues against Wong, *see, e.g., Tequesta Television, Inc.*, 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987). Noting that Mr. Wong is the permittee of KPTO(AM), Citrus Heights, California, the Board believes that his attempt to misportray the ownership structure of the instant applicant could well bear on his basic qualifications to be a Commission licensee. Without here finding intentional misrepresentation in this proceeding, we must nonetheless report that significant and material questions of fact have arisen regarding Mr. Wong's fundamental honesty with this agency. The Board shares the Commission's recently expressed concern with "sham" and abusive applications. As the Commission recently observed: "We have been faced with an increasing number of cases in which real parties-in-interest seek construction permits through sham corporate or partnership applicants." *In the Matter of Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301)*, 4 FCC Rcd 3853, 3856 (1989).[12]

CONCLUSIONS

39. Because it has been determined that the Wong application is a "sham," KPTO(AM) must be considered under Commission's the diversification criterion, and found to be fully attributable to Wong as a co-located media interest. In turn, Stolz is charged with his interest in KRCK(AM), Burbank, California (located some 400 miles south of Sacramento). Balancing these ownerhip interests, since Mr. Wong's KPTO(AM) will also serve the Sacramento market, and would be operated jointly (in many respects) with the FM facility at issue herein, Royce must be awarded a significant diversification preference. *See Policy Statement, supra*, at 394. As noted above, Royce will receive part-time integration credit for Stolz, while Wong, with its sham proposal, will not be awarded any integration credit whatsoever.

40. Royce is also entitled to a strong renewal expectancy in light of its superior record of service (and, at best, only slightly diminished because of its technical rule violations). Thus, Royce is the clearly preferred applicant here either under (1) the standard comparative criteria or, (2) based upon the renewal expectancy it has earned for its meritorious service to its community of license, Sacramento, California.

41. ACCORDINGLY, IT IS ORDERED, That the application of Edward Royce Stolz, II, tr/as Royce International Broadcasting for renewal of license for Station KWOD(FM), Sacramento, California (File No. BRH-

830719BD), IS GRANTED; and the application of Wong Commmunications Limited Partnership (File No. BPH-831031AM) for a construction permit fo a new FM facility to operate on the frequency of KWOD(FM), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] Wong did not file a reply to Royce's exceptions.

[2] The Board's decision in *Shoblom* was affirmed *sub nom. Royce International Broadcasting Co. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985).

[3] Wong asserted that the ALJ should have added issues in the instant proceeding to determine if Royce "engaged in a pattern of carelessness and ineptness in his failure to report numerous transmitter site problems" in *Shoblom* and *TRC*. Wong's requested issue is less than precise. As Royce notes in its Reply to Exceptions (at n.17), there were no questions raised as to Cascade's (Stolz's) transmitter site availability in *TRC*. In point of fact, as the Board recognized in *TRC*, the ALJ found in Cascade's favor with respect to the designated "§1.65 reporting/ineptness issue that [the ALJ] had added by *Memorandum Opinion and Order*, FCC 83M-1149, released April 7, 1983." *TRC Communications, Inc.*, 59 RR 2d at 93.

[4] The Board's *Decision* in that proceeding was issued after Silver State dismissed its application. *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948 (Rev. Bd. 1988), *recon. denied*, 3 FCC Rcd 5631 (Rev. Bd. 1988).

[5] Had the Board been presented with Stolz's complete explanation earlier in time, it is unlikely that our initial compunctions would have arisen.

[6] In pertinent part, 47 U.S.C. §504(a) provides as follows:

> The forfeitures provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this Act, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided*, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this Act shall be a trial de novo:

[7] 47 U.S.C. §504(c) provides:

> In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this Act, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

[8] At hearing, Stolz testified as follows with respect to his integration" proposals in Sacramento and Burbank (Tr. 239-240; 243-246):

> [Stolz Counsel]: Mr. Stolz let me direct your attention just very briefly to the issue of integration of management. You testified this morning in response -- I think this was to a question raised by Judge Chachkin, that your primary responsibility is with KWOD and would be, even if the KRCK station is built.
>
> [Stolz]: Yes, sir I did.
>
> [Stolz Counsel]: What does that mean in your mind? What does primary responsibility mean?
>
> [Stolz]: Well, having built and operated the station over the last nearly dozen years, KWOD is a successful broadcasting station which does require hands-on, full-time management. I have supplied that and gone well beyond full time in that regard. I consider that it is, certainly by far, the more significant property than -- compared with KRCK and, accordingly, it is and has been my intention that primary duty as general manager in overseeing the operations of KWOD receive full-time treatment plus.
>
> [Stolz Counsel]: Does that full-time treatment mean 40 hours a week?
>
> [Stolz]: Yes.
>
> [Stolz Counsel]: On a regular basis?
>
> [Stolz]: Yes.
>
> * * *
>
> [Wong Counsel]: Mr. Stolz, this morning we entered into evidence as Wong LP Exhibit 6 the Integration Proposal for Royce International Broadcasting that was submitted on April 13th, 1987, wherein you stated that you "presently work full time, splitting his time between Stations KWOD(FM and KRCK(AM) . . . ." Are you now changing your statement with respect to integration that you made on April 13?
>
> [Stolz]: I'm changing nothing. No, I don't believe that's an accurate characterization.
>
> [Wong Counsel]: Well, explain, then, how you intend to work full time above KWOD(FM) and KRCK(AM) as you've stated in your Integration Statement.
>
> [Stolz]: Look, I spend typically 12 hours a day daily or better in Sacramento tending to the management and guidance of KWOD. This is a fact, and this remains a given. With respect to KRCK, it is necessary to fly down to Los Angeles perhaps for one afternoon on an occasional basis to resolve matters pertaining to the site selection at that station. We are moving ahead in regard to that project, and I anticipate there will be additional

requirements for that time. Insofar as you have suggested that the construction -- suggested earlier that contruction of KRCK is more than a full-time requirement or obligation, I disagree that that is the case. I have, in fact, hired on a consulting engineering firm to handle matters relative to the construction of KRCK. Furthermore, I have given up my practise in the engineering field as an independent and no other time commitments exist for me,aside from management of the Sacramento FM station. That will continue in that vein, and I do believe that, by and large, full time at Burbank can be assured on an infrequent travel basis, on weekends, and by hiring the appropriate personnel. I believe I've already testified that I would be doing that and intend to do that and had intended all along to do that. So, I disagree that this is inconsistent. Perhaps I was seeking some kind of a formula here for the specification of time and a determination of where that time will be spent on a given day.

[Wong Counsel]: You testified this morning that you currently spend about ten hours a week on KRCK matters. Are you changing that testimony?

[Stolz]: I believe that I've just supported that testimony in my last answer.

[Wong Counsel]: So, you anticipate in the future to utilize ten hours a week a KRCK matters. Now, let's assume that the station gets into the construction phase. Do you anticipate having less responsibility or more responsibility in terms of the number of hours?

[Stolz]: I think there will be a certain level of commitment that will require activity on behalf of KRCK. That level should increase. It will not upset my schedule in Sacramento.

[Wong Counel]: That's the level of commitment on your part; is that correct?

[Stolz]: Yes.

[Wong Counsel]: And let's assume that at least initially you're unable to obtain some expert or engineer to run the station, to manage the station for you -- and I'm now talking about KRCK -- is that going to require more time and attention to get the station operational at that point?

[Stolz]: Well, I disagree. First of all, I have already made my intentions clear with respect to a specific individual who will be heading up operations at Burbank and, furthermore, we have also employed contract engineering personnel to proceed with respect to the construction of that facility.

[Wong Counsel]: All right. That's all the questions I have.

[9] The Bureau similarly supported the ALJ's findings and conclusions.

[10] Concerning Wong's exceptions to four particular news-entertainment programs, (Wong Exceptions, para. 35), Royce properly notes that even if these four programs were completely disregarded, the ALJ's findings (paras. 38-76) which describe the other public affairs, non-entertainment and news programming of KWOD(FM)(as to which Wong has no comment) provide a sufficient basis for the awarding of a strong renewal expectancy to Royce.

[11] Under the Commission's current rules, Mr. Wong would be able to locate the studio for KPTO(AM) in Sacramento because Sacramento is in the primary service area of Citrus Heights *(see* 47 CFR §73.1125)(I.D., para. 237).

[12] *See also Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process (First Report and Order)*, FCC 89-108, released May 16, 1989. The Board Chairman also observes that the ALJ's determination of a "sham" fully statisfies the standards set forth by the Commission in *Victory Media*, 3 FCC Rcd 2073 (1988), *Tulsa Broadcasting Group*, 3 FCC Rcd 4541 (1988), and *Susan S. Mulkey*, 4 FCC Rcd 5520 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-361

In re Applications of

CARROLL, CARROLL & ROWLAND — File No. BPH-870430NK

For a Construction Permit for a
New FM Station on Channel 281A,
at Calhoun, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 1989; Released: October 5, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN. Board Members BLUMENTHAL and ESBENSEN issuing Separate Statements.

1. The application of Glory FM Limited Partnership (Glory) was dismissed by Administrative Law Judge Joseph Stirmer (ALJ) for failure to prosecute because its principals refused to make themselves available for deposition, despite a specific ruling of the ALJ to do so. The ALJ characterized this deficiency as "a serious default in the prosecution of [Glory's] application." *Memorandum Opinion and Order*, FCC 89M-1183, released April 14, 1989. Thereafter, Glory filed a "Petition for Reconsideration" with the ALJ on May 15, 1989. Reconsideration was denied after the ALJ fully considered Glory's contention that its principals had proceeded in "good faith" but were "misled, misguided and and misrepresented by [former] counsel..." *Memorandum Opinion and Order*, FCC 89M-1623, released June 8, 1989. Pursuant to Section 1.302 of the Commission's Rules, 47 CFR § 1.302, on June 15, 1989, a Notice of Appeal was filed by Glory (now represented by new counsel) directly with the Board, and its formal Appeal was filed on July 10, 1989. Carroll, Carroll & Rowland (CC&R), the remaining applicant in this proceeding (whose application was granted in the same *Order* dismissing Glory) responded on July 25, 1989 with a Motion to Strike or in the Alternative Opposition to Appeal. Glory opposed CC&R's Motion to Strike on August 9, 1989.

2. *Motion to Strike*. CC&R urges that we summarily dismiss the instant appeal, contending that Glory neglected to comply with the filing deadline procedures of § 1.302, governing appeals from ALJ final rulings terminating a proceeding, and that the appeal is grossly untimely. Rule 1.302 requires that parties wishing to preserve their appeal rights from ALJ final rulings shall file a notice of appeal within 10 days after the ruling is released. The appeal is due 30 days after the release date. In the instant case, Glory elected not to file a notice of appeal within 10 days of the ruling or to file its appeal within the 30 day period, but, instead, filed a petition with the ALJ seeking reconsideration of his earlier ruling. CC&R claims that reconsideration of the ALJ's original ruling is not authorized by the Commission's Rules. CC&R further argues that the ALJ's jurisdiction ended on the day his ruling terminating the proceeding was issued, and, that although he erroneously entertained Glory's petition for reconsideration, the time for filing the notice of appeal expired more than two months before the instant appeal was filed.

3. We agree with CC&R's interpretation of the rules, but we will entertain the instant appeal on its merits because of the apparent confusion surrounding the rules governing appeals of ALJ rulings. Thus, in the instant case, in rejecting CC&R's claim that the petition for reconsideration was unauthorized, the ALJ responded that the petition was authorized by Section 1.106 of the Commission's Rules, 47 CFR §1.106. Moreover, it appears that it has been a practice for some ALJs to permit reconsideration of such rulings under §1.106. *See, e.g., Shirley Marchant*, FCC 89M-1664, released June 15, 1989. Our own research has persuaded the Board that §1.106, and particularly the provision we italize below (upon which the ALJ presumably relied for his ruling), does not apply to final rulings by ALJs.

4. Section 1.106(a)(1), reads in pertinent part as follows:

> Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of a final decision of the Review Board will be acted on by the Board or certified to the Commission (see §0.361 (b) and (c) of the chapter). *Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission....* (emphasis added).

The ALJ's original ruling which is challenged here is indeed a final ruling pursuant to §1.302(a), since it terminated the above-captioned hearing proceeding, *but*, for the reasons specified below, it is not a final action "taken pursuant to delegated authority" within the meaning of §1.106 (a)(1).

5. Section 0.201 of the Rules, 47 CFR §0.201, which pertains to delegations of authority, explicitly separates into two categories of rules those procedures which govern actions taken "pursuant to delegated authority" and procedures which pertain to appeals from ALJ rulings. Thus, §0.201 (c) provides:

> Procedures pertaining to appeals from rulings of the presiding officer are set forth in §1.301. Procedures pertaining to reconsideration of the presiding officer's rulings are set forth in §1.303 [now deleted]. Procedures pertaining to reconsideration and review of actions taken pursuant to delegated authority are set forth in §1.101, 1.102, 1.104, 1.106, 1.113, 1.115, and 1.117.

This bifurcated approach becomes clearer upon examining §0.201 (a)(1), (2), and (3):

> (a) There are three basic categories of delegations made by the Commission pursuant to section 5(d) [now 5(c)] of the Communications Act of 1934, as amended:
>
> (1) Delegations to act in non-hearing matters and proceedings. The great bulk of delegations in this category are made to bureau chiefs and other members of the Commission's staff. This category also includes delegations to individual commissioners and to boards or committees of commissioners.
>
> (2) Delegations to rule on interlocutory matters in hearing proceedings. Delegations in this category are made to the Review Board and to the Chief Administrative Law Judge.
>
> Note: Interlocutory matters which are delegated neither to the Review Board nor to the Chief Administrative Law Judge are ruled on by the presiding officer by virtue of the authority vested in him to control the course and conduct of the hearing. This authority stems from section 7 of the Administrative Procedure Act and section 409 of the Communications Act rather than from delegations of authority made pursuant to section 5(d) of the Communications Act. (see §0.218 and 0.341.)
>
> (3) Delegations to review an initial decision. Delegations in this category are made to individual commissioners, to panels of commissioners or to the Review Board.

Moreover, §1.101 of the Rules, 47 CFR §1.101, states that "Sections 1.102 through 1.120 [including §1.106 reconsideration] set forth procedural rules governing reconsideration and review of actions *taken pursuant to authority delegated under section 5(d) of the Communications Act*" (emphasis added). (A similar dual set of procedures is set forth in §1.291(c)(2) and (c)(3), which govern interlocutory actions in hearing proceedings). Thus, based on the language of the rules themselves, it is apparent that rulings by ALJs do not fall under the rubric of "actions taken pursuant to delegated authority," nor are they subject to §1.106.

6. The question remains, however, whether a petition for reconsideration of an ALJ's final ruling properly lies pursuant to other authority. We conclude that it does not. Prior to 1970, reconsideration of ALJ's oral and written adverse rulings were expressly permitted under §1.303, which provided: "[a]ny party may, after obtaining the oral consent of the presiding officer, file a petition requesting the presiding officer to reconsider an oral ruling or a written order." However, the Commission's Report and Order in *Hearing Proceedings-Presiding Officer Authority*, 26 FCC 2d 331 (1970), established that §1.303 pertained solely to interlocutory rather than final rulings. That Report and Order created a new subsection governing final rulings, (*i.e.*, §1.302) and limited §1.301, which previously had governed all ALJ rulings, to interlocutory or non-final rulings. Referencing a newly created §1.301(b)(3), which permits presiding officers to modify their interlocutory rulings, the Commission explained: "Because provision is made for modification of the ruling, we are deleting §1.303, which now provides for reconsideration of a ruling with the presiding officer's consent." 26 FCC 2d at 333.

7. Finally, Section 1.267(c) of the Rules, 47 CFR §1.267 (c), which specifically limits ALJs' jurisdiction, provides that the "authority of the Presiding Officer over the proceeding shall cease when he has filed his Initial or Recommended Decision...." *See also* §0.341. These provisions have previously been construed by the Commission to apply to Summary Decisions as well as Initial Decisions. *See Midwest St. Louis, Inc.*, 79 FCC 2d 519 (1980). The Commission there reasoned that "the grant of a summary decision on a dispositive issue terminates the hearing on that application, and the efficient operation of the Commission's processes would require that further motions and petitions relating to that application be considered by the reviewing authority." 79 FCC 2d at 537-540. This rationale appears to the Board to be equally applicable to ALJ Orders dismissing an application and *terminating* a hearing proceeding. Thus, we conclude that the ALJ here lacked jurisdiction to reconsider his earlier ruling terminating the proceeding, and that Glory's appeal was untimely. However, because this question has not been previously presented to the Board, and there has been no notice that such petitions do not properly lie (particularly since such petitions have been previously entertained), we will waive the filing requirements of §1.302 here and entertain the appeal on its merits. *See Denair Broadcasting Co., Inc.*, 49 RR 2d 1249, 1250 n. 1 (Rev. Bd. 1981) (waived 10-day notice of appeal requirement); *cf., St. Croix Wireless Co.*, 3 FCC Rcd 4073 (1988) (Board should have accepted untimely appeal because of equities of case).

8. *Glory's Appeal.* Glory urges that the ALJ's ruling should be reversed and its application reinstated. It recognizes that in *Hillebrand Broadcasting Inc.*, 1 FCC Rcd 419, 420 n. 2 (1986), on which the ALJ relied, the Commission indicated that:

> Counsel is the applicant's agent and the applicant is bound by counsel's action. Thus, although it is counsel rather than applicants who generally appear before us in these matters, they do so on behalf of their applicants. Were we to excuse all failures of counsel, we would leave our ALJs with no power to control proceedings. This would severely hinder the efficiency of our proceedings, particularly those involving multiple parties, which in turn would be unfair to the other applicants and would delay service to the public. *We believe it is appropriate, therefore, to expect that applicants will choose their counsel with care and know that they will suffer the consequences if they are represented by counsel who do not vigorously prosecute their applications.* (Emphasis added).

Glory submits that: "The general principle articulated in *Hillebrand* may be valid, but it should not be applied with such a broad brush as to justify the dismissal of an applicant who earnestly wishes -- and has sought-- to pursue the authorization for which it has applied and extended significant monies to date." Appeal p. 6. Its principals "have actively prosecuted" their application, and "have done so whenever they understood that there was something for them to do." Moreover, "no reasonable person would have anticipated or recognized the derelictions of counsel which led to the Judge's ruling in this proceeding." Finally, "the other applicant was not materially prejudiced, nor were the Commission's pro-

cesses abused by the applicant." Appeal p. 8. We will affirm the ALJ's dismissal order for the reasons which follow.

9. Our review of the ALJ's orders, *supra*, and the underlying factual record, simply does not support Glory's claim that the derelictions which led to its dismissal were all attributable to former counsel, and that its principals complied with all the prehearing requirements of which they were aware. The record supports the ALJ's finding that on January 25, 1989, CC&R gave notice of intention to depose Glory's General partner, David Suttles, and three limited partners on March 3, 1989. On that date, counsel for CC&R appeared in Cleveland, Tennessee to take the depositions, but Glory's then-counsel, Thomas Root, did not appear. David Suttles appeared and was being deposed when one of Glory's "passive" limited partners appeared, and insisted that the deposition be terminated until Glory's counsel was contacted and could be present. FCC 89M-1183, *supra*, at paras. 2-3.

10. As permitted by the Commission's rules, 47 CFR 1.319(c)(3), the presiding ALJ was notified (via telephone) of the disruption, and asked whether the deposition could or should continue in the absence of counsel. He ruled that because full notice had been given, the deposition should continue, and that the failure of Glory to comply with his specific order would result in Glory's default. The transcript of the deposition reveals that the ALJ's ruling was personally communicated to both counsel for CC&R and Suttles, Glory's general partner. CC&R Att. 1 (Transcript of Deposition at pp. 83-93).

11. After the ALJ's ruling, Suttles finished his deposition, but the limited partners (at least one of whom is a lawyer), although specifically aware of the ALJ's ruling, refused to be deposed stating that they had been advised not to do so by counsel Root. Thus, only one of four scheduled depositions were taken. FCC 89M-1183, at para. 3, and CC&R Att. 2. As a result (in response to CC&R's Motion to Dismiss), the ALJ held that:

> this applicant's refusal to make its principals available for deposition, despite the ruling of the Presiding Judge, constitutes a serious default in the prosecution of its application. The reason given for the failure of its principals to be deposed was the absence of counsel, but the failure of counsel to be present for the deposition session was his own fault. Mr. Root was properly advised of the time and place of the scheduled depositions and chose not to attend. The time and place of the scheduled depositions were not changed, and no explanation is offered as to why counsel for Glory FM was not in attendance. *In any event, because the Presiding Judge ruled that, under the circumstances, the depositions could and should go forward, the failure of the Glory FM principals to be deposed constituted a serious default in the prosecution of its application.* (Emphasis added).

12. On reconsideration, the ALJ rejected Glory's attempt to place all the blame for its dismissal on prior counsel, observing that as a matter of Commission law, an applicant "may not escape the consequences of its nonprosecution by shifting the responsibility to its former counsel." FCC 89M-1623, *supra*, para. 3, citing *Vela Broadcasting Co.*, 102 FCC 2d 997, 999-1000 (Rev. Bd. 1985), and *Hillebrand Broadcasting, Inc., supra*. Later in his order, the ALJ narrowed this proposition when, based on the specific facts in this case, he found that, "Some of [Glory's] principals refused to be deposed despite the Presiding Judge's ruling that counsel's absence from such session was no excuse for interrupting or terminating the deposition session." *Id.*, at para. 4. Accordingly, the ALJ noted that "the principals of Glory willfully defied a ruling of the Presiding Judge and refused to give their deposition." *Id.*, at note 2.

13. At the outset, it is generally recognized that applicants are not immunized against sanctions merely because they relied on erroneous legal advice. *See Vela Broadcasting Co., supra*. "To hold otherwise would create administrative and procedural havoc by either: (a) allowing dismissed applicants to simply incant counsel is to blame and thereby automatically achieve reinstatement of their applications, or (b) requiring evaluation of the competence of counsel, thus involving us in questions of professional competence more properly left to courts and boards of review established for this purpose." 102 FCC 2d at 1000, quoting *United Public Broadcasting Co., Inc.*, 57 RR 2d 1605, 1606 (1985). In fact, the Commission's deposition rules provide that after an ALJ has ruled pursuant to 47 CFR §1.319(c)(3), and given notice thereof, "The taking of depositions shall continue in accordance with the presiding officer's ruling. Such rulings are not subject to appeal." 47 CFR §1.319(c)(4). An ALJ primarily vested with responsibility for regulating the course of a hearing is not powerless to impose sanctions at hearing if confronted by a refusal of a witness to testify based on advice of counsel who had voluntarily elected not to attend the hearing. Such recalcitrance, if left unchallenged, would undoubtedly result in procedural chaos.

14. Similarly, past precedent firmly supports the ALJ's dismissal of Glory's application because of its principals' refusal to give their depositions. Depositions are an essential part of the FCC's discovery rules, and an important procedural device for expediting resolution of comparative hearings. *Pan American Broadcasting*, 89 FCC 2d 167, 170 (Rev. Bd. 1982). In 1980, the Commission first dismissed an applicant which refused to participate in prehearing discovery, and the D.C. Circuit Court affirmed its decision. *See Faith Center, KHOF (TV)*, 82 FCC 2d 1 (1980), *aff'd sub nom. Faith Center, Inc. v. FCC*, 679 F. 2d 261 (D.C. Cir. 1982). That ruling has been followed in several other cases. *See Faith Center, Inc.*, 92 FCC 2d 1255 (Rev. Bd. 1983), and *Faith Center, Inc.*, 94 FCC 2d 756 (Rev. Bd. 1984), which were both affirmed on appeal (No. 83-2295, D.C. Cir. filed May 9, 1985). Thus, it is well-settled that refusal to participate in prehearing deposition sessions frustrates efforts to refine the issues to be tried in a timely fashion and justifies the dismissal of the offending applicant, absent extenuating circumstances. *See e.g. VOB Incorporated*, FCC 89R-54, released September 7, 1989. As we have previously recognized, in *Comuni-Centre Broadcasting, Inc.* v. *FCC*, 856 F.2d 1551, 1554 (D.C. Cir. 1988), the Court upheld the ALJ's authority to dismiss a broadcast applicant for failure to prosecute after considering:

> the applicant's proffered justification for the failure to comply with the presiding officer's order, the prejudice suffered by other parties, the burden

placed on the administrative system, and the need to punish abuse of the system and to deter future misconduct.

15. Here the applicant's principals had actual notice of the ALJ's order, and deliberately chose to ignore that order and instead follow its then-counsel's questionable advice. As the ALJ found, "the failure of those principals to go forward with their depositions placed an added burden of time and expense on CC&R." FCC 89M-1183, note 2. Counsel for CC&R had travelled from Washington, D.C. to Cleveland, Tennessee (after giving more than thirty days notice), so that the depositions could be taken near the proposed community of license. Moreover, Glory's refusal disrupted the schedule established by the ALJ following the prehearing conference. Thus, after the case had been designated for hearing on August 10, 1988 (3 FCC Rcd 4796) the ALJ had allowed ample time for discovery, before the direct written case and sworn testimony of the parties had to be exchanged on March 21, 1989, and the hearing was to commence on April 25, 1989. *See* FCC 89M-3545, released October 19, 1988. An additional burden was placed on the administrative system by the frustration of discovery on March 3, 1989, which made it impossible for the parties to comply with the rest of the ALJ's procedural schedule. Finally, both the Commission and the Court have previously held that dismissal of an application is a fit remedy in order "to deter future misconduct" when an applicant ignores an ALJ's discovery order.

16. ACCORDINGLY, IT IS ORDERED, That the Motion to Strike filed July 25, 1989, by Carroll, Carroll & Rowland IS DENIED; and that the Appeal filed on July 10, 1989, by Glory FM Limited Partnership IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

SEPARATE STATEMENT
OF
BOARD MEMBER NORMAN B. BLUMENTHAL

Again, as in *Mark A. Perry*, 4 FCC Rcd 6500, 6504 (Rev. Bd. 1989)(separate statement), I express my concern that the final sanction of outright dismissal be supported by a record of such contumely for an ALJ's orders, or for other failures so plainly disruptive, that prejudice heavily burdens the compliant applicants. Nothing in our rules or our precedent provides a "sudden death" corollary to our procedural protocols, and dismissal should largely be saved as a remedy of last resort. *Comuni-Centre Broadcasting, Inc. v. FCC*, 856 F.2d 1551 (D.C. Cir. 1988).

In the face of the ALJ's telephonic instruction that this appellant's principals should ignore their lawyer's contrary advice to await legal representation, and to nonetheless submit to immediate deposition, it could well be said that our instant appellant chose its own fate, and must suffer it here. However, given the general disfavor of the law for the summary dismissal of a litigant's case, a second (but last) opportunity for compliance would certainly not have abused the ALJ's routine discretion. Had the initial judgment been mine to make, a subsequent written order compelling prompt compliance (at a specified date and time, and at appellant's sole expense) would likely have preceded any terminal dismissal, even in the teeth of the appellant's undeniable provocation.

I would respectfully entreat our ALJs, who are all seasoned professionals, to duly consider in each particular case "whether sanctions less severe than dismissal might be appropriate," *Comuni-Centre*, at 1556 n. 40, especially if the bizarre actions of counsel are the "root" cause. (So to speak.)

SEPARATE STATEMENT
OF
BOARD MEMBER ERIC T. ESBENSEN

The actions of lawyer-principal Colloms (a Glory "limited" partner) in advising "general" partner David Suttles to cease and desist from giving additional testimony at the deposition session, coupled with his (and the other "limited" partner's) refusal to subsequently be deposed in disregard of the ALJ's specific order to do so, is no more than out-and-out contempt.

Glory's principals elected how to proceed; now they must live with their decision and its consequences.

While I generally concur with the views expressed in the Separate Statement, *ante* (as they may apply under more appropriate circumstances not present here), I respectfully submit that a "second (but last) opportunity for compliance" would not be warranted in this proceeding. This is especially true in light of Glory's other delicts highlighted by the ALJ *(Order*, para. 5):

> Such default is not the only instance giving rise to the notion that Glory FM does not genuinely desire to prosecute its application. In this connection, it is noted that a petition to enlarge issues was filed against that applicant on January 31, 1989, in which serious basic qualifying issues were raised. Despite seeking and obtaining two extensions of time to respond to the petition to enlarge issues, Glory FM ultimately failed to file any opposition. Additional proof of Glory FM's lack of desire to prosecute its application is found in its failure to file an opposition to the motion to dismiss its application. Finally, Glory FM failed to exchange its direct case exhibits on April 11, 1989, as required by Order of the Presiding Judge released October 18, 1988 (FCC 88M-3445).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-364

In re Applications of

ADLAI E. STEVENSON IV	File No. BPH-870909MK
Louise B. Toft and Stuart A. Toft d/b/a ALLIANCE BROADCASTING OF CHAMPAIGN COUNTY	File No. BPH-870910MT

For a Construction Permit
For a New FM Station on
Channel 290A in
Mahomet, Illinois

Apperances

Harry C. Martin and *Matthew McCormick* on behalf of Adlai E. Stevenson IV. *Eric S. Kravetz* on behalf of Louis B. & Stuart A. Toft. *Robert Zauner* for Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
WALTER C. MILLER

Issued: September 27, 1989; Released: October 5, 1989

PRELIMINARY STATEMENT

1. Of the four original applicants in this proceeding, two remain: Adlai E. Stevenson, IV; and Louise B. Toft and Stuart A. Toft d/b/a Alliance Broadcasting of Champaign County. *See* 53. F.R. 32600 published August 26, 1988; FCC 88M-3121, released September 22, 1988; and FCC 88M-3142 released September 22, 1988.

2. After the interlocutory cycle had run its course, and after the partial settlement agreements had been approved the following four issues remain to be resolved:[1]

(1) To determine whether Alliance has reasonable assurance that the transmitter site described in their November 20, 1987 amendment is available, and if not, whether Alliance is basically qualified to be a Commission licensee;

(2) To determine whether Alliance, in its November 20, 1987 amendment has misrepresented the availability of their transmitter site and if so, what effect that has on their qualifications to be a Commission licensee;

(3) To determine which of the proposals would, on a comparative basis, best serve the public interest;[2] and

(4) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

Both the burden of proceeding and the burden of proof on the site availability issues; *i.e.*, Issue 1 remains on Alliance. The burden of proceeding on the false site certification issue; *i.e.*, Issue 2 is on Stevenson, while the ultimate burden of proof remains on applicant Alliance.

3. We held the prehearing conference on November 29, 1988, an evidentiary admission session on December 9, 1988, and the hearing on January 30-31, 1989. The evidentiary record was originally closed on January 31, 1989 (FCC 89M-362 released February 3, 1989). However, the record was reopened on February 10, 1989, and again on April 11, 1989, to receive additional Alliance exhibits, and then reclosed. *See* FCC 89M-510 released February 14, 1989, and FCC 89M-1161 released April 13, 1989.

4. The two applicants filed their Proposed Findings of Fact and Conclusions of Law on March 28, 1989, and Reply Findings on April 14, 1989.

FINDINGS OF FACT

Issue 1 - Alliance's Site Availability Issue

5. When they originally filed their application on September 10, 1987, the Tofts proposed a site located in Bondville, Illinois. That site was on land owned by Alliance Communications, a sole proprietorship of Stuart A. Toft. In fact, the transmitter site was to be located next to the building where that company is headquartered. It was Stuart Toft who prepared the technical portion of the Tofts' application that specified the Bondville site.

6. However, about a month later (in mid-October 1987), the FAA notified Alliance that the site coordinates in the Notice of Proposed Construction filed with the FAA were erroneous. So Stuart Toft reviewed his work and discovered that he had indeed erroneously computed the coordinates both for his FAA and FCC Form 301 filings. So he telephoned Alliance's counsel and told him of the error. Alliance's counsel indicated that Alliance would have to file a corrective amendment on or before November 20, 1987.

7. Stuart Toft then prepared a corrective amendment and forwarded it to counsel. On Thursday, November 12, 1987, Mr. Toft contacted Alliance's counsel to make sure that counsel had received the amendment and that it was ready for filing. Counsel said that the amendment had arrived and was ready for filing, but that Toft should be certain that no other corrections were needed because this would be the only opportunity that Alliance would have to correct such deficiencies.

8. So on Friday, November 13, 1987, Mr. Toft again reviewed the technical portion of Alliance's application and double-checked his own engineering calculations. It was then that he discovered that he had specified a site which was about two miles short-spaced to a station in Monticello, Illinois. This, in turn, led Toft to prepare a

new technical proposal involving a new site; *i.e.*, the Johnston site. That amendment was filed on November 20, 1987.

9. On August 15, 1988, the Chief, Audio Services designated this proceeding for hearing. He noted that Alliance had filed technical data with the FAA that differed with that filed with the FCC. So he called on Alliance to file a corrective amendment, and he specified an air hazard issue against Alliance. *See* 53 F.R. 32600 published August 26, 1988 at para. 2 and 5. Alliance filed that technical amendment on September 13, 1988. It was accepted. *See* FCC 88M-3293, and FCC 88M-3294, both released October 14, 1988.

10. On September 26, 1988, Alliance's opponent, Stevenson moved to enlarge the issues against Alliance. Stevenson alleged, *inter alia*., that, in an effort to meet the November 20, 1987 amendment deadline, the Tofts had specified a transmitter site that wasn't available to them, and that they knew wasn't available to them.

11. On October 26, 1988, while Stevenson's enlargement request was still pending, the Tofts *again* sought permission "...to specify a new transmitter site and make associated changes..." in their technical proposal. They did so even though they had previously been told that their November 20, 1987 amendment would be the only opportunity that they would have to correct such deficiencies. *See* Finding 7 *supra*. That site change request was denied. *See* FCC 88M-3873 *supra*., released November 15, 1988. Two days later the Presiding Officer added a site availability and a false site certification issue against the Tofts. *See* FCC 88M-3922, released November 17, 1988.

12. At the hearings held on January 30-31, 1989 (see Finding 3 *supra*.) it developed that the Johnston site (see Finding 8 *supra*.) is not now and never has been available to the Tofts. *See* Findings on Issue 2 *infra*; and Tr. 72.

13. *Issue 1 - Intermediate Facts*. Based on Findings 5-12 *supra*, it is found that Alliance has no reasonable assurance that the Johnston transmitter site described in their November 20, 1987 amendment is available. It is further found that the Tofts knew at the time they filed their November 20, 1987 amendment that the Johnston site wasn't available. But they did nothing about it until after Stevenson filed his enlargement request against them on September 26, 1988. Since the Tofts' November 20, 1987 site is not available, Alliance has no transmitter site and isn't basically qualified to be a Commission licensee.

Issue 2 - Alliance's False Site Certification Issue

14. The Tofts were aware by mid-October 1987 that the deadline for curative amendments was November 20, 1987. Thus when Stuart Toft uncovered his short spacing deficiency in his Bondville site on Thursday, November 12, 1987, he knew time was of the essence. He realized that he would have to prepare a new technical proposal for a new site they had not yet obtained, and have it on file with the FCC in eight days.[3] Stuart Toft also knew that it would take him 24 hours to put the engineering for a new site in final form. The Tofts believed that they had to have their engineering completed by the close of business on Wednesday, November 18, 1987 to meet the November 20 deadline (Alliance Ex. 4, p. 2; Tr. 284, 368, 486, 488-489).

15. So on November 13, 1987, the same day he discovered the error, Stuart Toft did two things. First, on a map he defined a "target area" within which the new site would have to be located. And secondly, he called his counsel, not only to report the error, but he also obtained the names of the people from which the three opposing applicants had obtained their sites.[4] (Tr. 372-374).

16. On Saturday, November 14, 1987, the Tofts began searching for a new site. First in the morning they drove through the target area. In the afternoon Mr. Toft went back on the road for two or three more hours. While Mrs. Toft went back to the office to identify property owners using plat maps of the area. The Tofts made no contacts with owners of prospective sites on Saturday.

17. On Sunday, November 15, 1987, Stuart Toft drove around the target area again while Louise Toft began trying to contact people. On November 15, 1987, and Monday, November 16, 1987, if her hearing testimony can be believed (see Finding 18 *infra*.), Mrs. Toft:

> (a) contacted two real estate agents, John Kaiser and Donna Helm (Tr. 180). Both agents said they'd check out the situation and get back to her. But neither called back before the Tofts decided to specify the Seely Johnston property as Alliance's transmitter site (Tr. 285).
>
> (b) contacted a Colin Halfwassen, an Allied Communications' client. However, it isn't clear what she asked Mr. Halfwassen to do (Tr. 181).
>
> (c) telephoned Helen Schowengardt, the property owner specified in the competing Dybedock application. But Schowengardt wanted her attorney's input on the matter, and she wanted a written agreement. The Tofts never contacted Schowengardt's attorney (Tr. 181, 194, 281-282).
>
> (d) called two banks in Champaign about possible sites. But neither bank called her back before the Tofts decided to specify the Seely Johnston property (Tr. 190, 287).
>
> (e) tried unsuccessfully to reach Ross Camp of Ross Camp Farm Management. Camp didn't call back until Tuesday afternoon, November 17, 1987, after the Tofts had made their site decision (Tr. 193, 254).
>
> (f) tried unsuccessfully to reach Henry Voightlander, a landowner in the area. He too didn't call back until Tuesday afternoon.

18. Louise Toft's January 30, 1989 *hearing* testimony (Finding 17 *supra*.) differs substantially from the declaration she gave on October 25, 1988 in Alliance's opposition to Stevenson's enlargement request. In that declaration she described the contacts she (and her husband) had made this way (Alliance Ex. 4):

> " . . . By the end of the weekend, we had reviewed a number of potential sites and had talked to a property owner who had advised us that he was interested in our proposal but that he would not be available to discuss specific terms with us until that Tuesday (because he would be out of town for the rest of the weekend and Monday.)"

19. Mrs. Toft also said in her October 25,1988 declaration that if Seely Johnston had indicated that he wouldn't enter into an agreement with the Tofts " . . . we simply

would have continued our search for a new site or gotten back to the owner who had invited us to do so . . . " (Alliance Ex. 4).

20. Since her *later* (January 30, 1989) hearing recollection was much more specific and detailed than her *earlier* recollection, and since she didn't mention any of the specifics in her October 25, 1988 declaration, Mrs. Toft was questioned about the unnamed landowner in her declaration (Findings 18-19 *supra*.). She still could not identify this alleged landowner[5] because she did not keep the notes of that conversation. (Tr. 261, 362). On the other hand, she said she included her contact of this unidentified landowner in her declaration because she "particularly" recalled the conversation she had with him. (Tr. 267). But she cannot recall what specific property that unidentified landowner controlled. (Tr. 362). Moreover, when she prepared her October 25, 1988 declaration Mrs. Toft made no attempt to obtain the unidentified landowner's name because she would consider doing that " . . . an imposition on a person." (Tr. 270-271).

21. In looking for a new site the Tofts also decided to contact the property owners identified in their competitors' applications. They believed that if those landowners were willing to lease or sell land to others for use as an antenna site they would also be willing to sell or lease to Alliance. Accordingly, they contacted both Helen Schowengardt (see Finding 17(c)), and Seely Johnston, Stevenson's property owner. It is the facts and circumstances underlying the Tofts - Seely Johnston conversations that will determine whether the Toft's November 17, 1987 site certification is a misrepresentation or not. And there is a wide disparity between what Louise Toft says about those conversations, and what landowner Seely Johnston says occurred.

22. On Monday afternoon, November 16, 1987, Louise Toft stopped by to see Seely Johnston at his sporting goods store in Champaign. According to Mrs. Toft, she stated the purpose of her visit, and Mr. Johnston said he *was interested*, but that he was busy, and he asked her to return the following morning (Alliance Ex. 4, p. 4: Tr. 197, 201-202).

23. Seely Johnston's version of Louise Toft's first visit differs, not dramatically but significantly. Mr. Johnston says that he told Mrs. Toft that he *wasn't interested*, and that he was busy. She then suggested a second meeting, and Mr. Johnston said that while he wasn't interested in leasing her property, "I will be courteous enough to listen... I think it's courtesy to anybody that walks in the door you should listen." (Tr. 116-117).

24. Louise Toft returned to Seely Johnston's store on the morning of Tuesday, November 17, 1987 (the day the Tofts *certified* that Seely Johnston had given them reasonable assurance they could lease his land for Alliance's transmitter site) Mrs. Toft says she again indicated that they wanted to negotiate a lease for a portion of his land if they received a construction permit; and that Johnston indicated that he already had a written agreement with Stevenson, and he didn't want to do anything that would jeopardize Stevenson's application. Mrs. Toft then says that she then explained that Johnston could have an understanding with more than one party since there would be only one winner at the FCC. Johnston responded with a short comment like "I see." Then, Mrs. Toft swears: Johnston left her sight; she heard the sound of a copying machine; and Johnston returned and gave her a copy of the one-page agreement he had with Stevenson. She then asked him if he'd enter into the same basic agreement with them. She says Johnston said that he would, but that he wouldn't sign anything without reading it first. (Alliance Ex. 4, pp. 4-5; Tr. 208-210).

25. Johnston's recollection of the second meeting is almost totally different. Johnston says that he told Mrs. Toft that he had a written understanding with Mr. Stevenson and that " . . . under no circumstances, would he negotiate with any other person or persons until Stevenson was no longer interested in the property." (Stevenson Ex. 2, p. 1; Tr. 119). Johnston pointed out to Mrs. Toft that he had given his word of honor that Stevenson is the only one, and that he was legally and morally obligated to live up to his word. (Stevenson Ex. 2, p. 1; Tr. 118-119, 123).

26. Stated another way, Johnston's hearing testimony is consistent with his September 18, 1988 declaration when he says (Stevenson Ex. 2; Tr. 69):

> "In short, I have not made my property available to any applicant for the Mahomet FM station other than Mr. Stevenson. Any representation to the contrary is untrue.... While I presume that the two individuals who contacted me last Fall were the Tofts, I did not give them... assurance of any kind that my property would be available to them if they were successful in obtaining the station. There was no exchange of letters or other writings between the Tofts and myself. (In contrast, the understanding between Mr. Stevenson and myself was in writing). The Tofts' proposed use of my property is without authorization."

27. As previously found (Finding 24 *supra*.), Louise Toft swears that Johnston made a copy of his agreement with Stevenson available, but she can't locate that document. (Tr. 208-209; Alliance Ex. 4, p. 6). She says the agreement described the property, the terms of the arrangement with Stevenson, and Stevenson's and Johnston's signatures. (Tr. 208-209). She says that based on the document she purportedly received from Johnston she went back to her office and prepared a lease agreement for Johnston to sign. (Alliance Ex. 4, 6). She claims that in preparing the lease agreement she followed the format of the Stevenson document sentence by sentence, including the same basic terms and much of the same language. Although she can't produce the document Johnston ostensibly gave her, Mrs. Toft says she can recall the similarities between the Stevenson/Johnston agreement and her draft agreement. She even underscored those portions of her draft which she says had been taken directly from the Johnston document. (Alliance Ex. 4, pp. 6-8).

28. On the other hand, Johnston says he never made a copy of his agreement with Stevenson and gave it to Louise Toft. He doesn't even have copying machine at the store (Cf Finding 24 *supra*.). He further points out that even if he had decided to retrieve his agreement with Stevenson, he would not have left Mrs. Toft's sight; he keeps the agreement in a safe which is in plain view from the selling area of the store. (Tr. 138, 147-148).

29. Johnston was shown a copy of the document Mrs. Toft had created. He said, "This is something out of the clear sky" (Tr. 71). Johnston says the only information that he provided Mrs. Toft about his agreement with Stevenson was the amount of money that would be

charged, and that he (Johnston) wanted to retain the mineral rights to the property. Moreover, Stevenson was also shown the Toft-created document. He said "Seely and I have never exchanged anything like this." (Tr. 573).

30. Moreover, a comparison of the Seely/Johnston Transmitter Site Lease letter (Stevenson Ex. 5) with the document Louise Toft created (Alliance Ex. 4, p. 8) forcefully demonstrates that Mrs. Toft has dissembled. They not only bear little resemblance to each other, it becomes evident that Mrs. Toft couldn't have "...followed the format of the Stevenson document sentence by sentence, including the same basic terms and much of the same language..." Nor could she have "...specified slightly different coordinates..." Nor could she have taken directly from the Stevenson document the legal description of the land. In brief, we don't know what document Louise Toft had before her when she created page 8 of Alliance Exhibit 4,[6] nor do we really know when she created it. But we do know that it certainly wasn't the Seely Johnston/Adlai Stevenson IV lease arrangement.

31. The Stevenson agreement is in letter form that only Seely Johnston has signed; Alliance's draft calls for the signature of both parties. The Stevenson agreement involves the use of six acres of Johnston's property; Alliance's draft calls for ten acres. Stevenson's lease was to be 20-30 years; Alliance's provides for an initial ten-year lease with a right of renewal for an additional ten years. The Stevenson agreement describes the property involved in terms of the relationship of the land to the nearby roads; the Alliance draft describes the property in terms of geographic coordinates of the site, the total number of acres in the tract and other legal description.

32. There are other perplexing inconsistencies in Mrs. Toft's version of the Toft-Johnston episode. For example, in her October 25, 1988 statement she claims that Seely Johnston *expressly* stated that he wanted a written agreement, because he said "...that he would not sign anything without reading it first." (Alliance Ex. 4, p. 5). But at her December 14, 1988 deposition, Mrs. Toft said that Johnston only *implied* that he wanted a written document (Tr. 300). Still later, at the January 30, 1989 hearing, Mrs. Toft said "I don't think that I said he *implied* that. "(Tr. 298). While the shifts in testimony are minor shifts, they exemplify a predisposition on Louise Toft's part to joust verbally with opposing counsel instead of testifying directly. In any event, the record shows she never got a written agreement from Johnston. (*See* Findings 28-29 *supra*.).[7]

33. We were also led down a dead-end street when we tried to trace what happened to Louise Toft's draft agreement after she prepared it. She claims that after she prepared it, she signed it, and gave it to a then Alliance employee, Tamara Duvall, to deliver to Mr. Johnston. (Alliance Ex. 4, p. 7; Tr. 300). But the agreement was never returned, Mrs. Toft does not recall asking Ms. Duvall if she had made delivery, and when Mrs. Toft contacted Ms. Duvall in December, 1988,[8] Ms. Duvall didn't recall having been asked to deliver a document to Seely Johnston. Mrs. Toft concedes that she had no follow-up contact with Mrs. Johnston regarding the alleged written agreement. (*See* Alliance Ex. 4, p. 7; Tr. 300, 302).

34. *Demeanor Findings*. In resolving the Alliance misrepresentation issue (Issue 2 *supra*.), it is essential to make demeanor findings. Louise Toft and Seely Johnston have given diametrically opposed versions of the facts leading up to Louise Toft's certification that the Seely Johnston property was available for use as Alliance's transmitter site. (Compare Findings 22, 24 and 27 *supra*., with Findings 23, 25-26, 28-29 *supra*.). In addition, Mrs. Toft claims that "the only reasons" Seely Johnston's version of events differ from hers "is due to a faulty memory" on his part. (*See* Alliance Ex. 4, p. 7.).

35. Seely Johnston is 85 years old, but he's a young-looking 85. He describes his hearing as average, but says people have told him he needs a hearing aid. He takes no medication, still runs his own business, drives a car (to Chicago on occasion), and travels. He is presently compiling an historical account of Chanute Air Force Base and its commanders.

36. As a witness, Johnston understood and responded to the questions he was asked, appeared confident of his answers and was otherwise credible. He detailed factually the events that led to his September 18, 1988 declaration. (*See* Finding 26 *supra*.). His testimony was basically consistent and corroborated by Adlai Stevenson IV's rebuttal testimony. (Tr. 567-592). Most importantly, Mr. Johnston's version of what occurred harmonizes with the contemporaneous documents that have been introduced into evidence. *See* Findings 28-31 *supra*.

37. Now its true that there is a rapport between Seely Johnston and Adlai Stevenson IV that stems from the great respect that Johnston had for Stevenson's grandfather. (*See* Tr. 96-100, 136). But this in no way detracted from Johnston's telling the truth, the whole truth and nothing but the truth.

38. On the other hand, the Presiding Officer was singularly unimpressed with Louise Toft's testimony on the site certification issue. She suffered from a selective memory; *i.e.*, she could remember details very well when they cast a favorable light on her testimony, but showed a total absence of memory on key events that could put her testimony in a less favorable light. (*See* Stevenson Proposed Findings of Facts 23-25; and Finding 20 *supra*.).

39. On other occasions Mrs. Toft testified inconsistently, and she seemed more interested in jousting verbally with Stevenson's counsel than she did in searching for the truth. (*See* Finding 32 *supra*.; Findings 17-20 *supra*.). In still other instances, Mrs. Toft's answers didn't hold together; she was unable to produce at least one vital document that could have lent credibility to her version of the facts (Finding 27 *supra*.); and Tamara Duvall couldn't corroborate what happened to the draft agreement Louise Toft ostensibly prepared on November 18, 1987. (Finding 33 *supra*.).

40. Most importantly, when Mrs. Toft's testimony is evaluated against the contemporaneous documents that have been made available (Stevenson Exhibits 4, 5 and 5-A), it shows her testimony to be abjectly false. So Seely Johnston's testimony will be credited, and Louise Toft's rejected.

41. *Intermediate Findings*. Based on Findings 14-40 *supra* certain intermediate findings are warranted. When the Tofts certified that they had obtained reasonable assurance from Seely Johnston that they could use his land for Alliance's transmitter site, that certification was false. And they (at least Louise Toft) knew it was false.

42. Having botched up their engineering on two previous occasions,[9] the Tofts had only 8 days (from November 12 to November 20, 1987) to locate and obtain a new site, prepare the engineering for that site, and forward it to Washington counsel for filing. They started their search on November 13, 1987, but quickly realized that there

wouldn't be enough time to start from scratch. So they turned their attention to the landowners who had agreed to make land available to their (the Toft's) competing applicants. They believed (mistakenly as it turned out) that if those landowners were willing to lease or sell land to others to use as an antenna site they would also be willing to sell or lease to Alliance. They considered only two of the three eligible landowners: Helen Schowengardt and Seely Johnston.[10]

43. On either Sunday, November 15 or on Monday, November 16, 1987, Louise Toft telephoned Helen Schowengardt the property owner specified in the competing Dybedock application. But when Ms. Schowengardt indicated that she wanted her attorney's input into any negotiations between them, and that she wanted a written agreement, the Tofts had to eliminate her. Time was running out; they had no time for lengthy negotiations. So that left only Seely Johnston. If the Tofts had any chance at all of meeting the November 20, 1987 deadline, they had to strike a deal with Johnston.

44. However, Seely Johnston refused to deal. When Louis Toft met with Seely Johnston on Monday afternoon, November 16, 1987, Johnston expressly told Mrs. Toft that he wasn't interested, and that he was busy. She then asked for a second meeting, and Johnston reaffirmed that the wasn't interested in leasing her his property, but that he would show her the courtesy of listening to what she has to say.[11]

45. When Louise Toft returned to Seely Johnston's store on Tuesday morning, November 17, 1987, she again tried to convince Johnston that it was okay to enter into a deal with the Tofts as well as Stevenson since only one of two could be granted. But Johnston was adamant. He said he had a written agreement with Stevenson; that he intended to keep that agreement; that he would not "entertain anybody" until Stevenson was "out of the picture;" and that even then "...I may not want to deal with individuals that are talking to me at that time..."[12]

46. Nevertheless, and in the face of Johnston's two point blank refusals, on November 17, 1987, the Tofts certified that Seely Johnston had given them reasonable assurance that they could lease his land for Alliance's transmitter site, and they forwarded their application (along with that site certification) to their Washington counsel for filing on November 20, 1987. Moreover, to make it appear that Johnston had given them such reasonable assurance, Louise Toft drew up a draft agreement that was ostensibly based on the Johnston-Stevenson agreement, (even sentence by sentence). The real problem is that her draft bears very little resemblance to the Stevenson-Johnson agreement.

47. Thus the intermediate finding is warranted that, in their November 20, 1987 amendment the Tofts deliberately misrepresented the availability of their transmitter site, then concocted a document to help cover up that misrepresentation, and then gave false testimony about the facts underlying that false certification.

Issue 3 - The Comparative Issue.

48. *Description of the Applicants*. Adlai E. Stevenson has filed BPH-870909MK as a sole proprietorship. Alliance is an Illinois general partnership. Louise Toft holds 75% equity in the partnership; her husband, Stuart A. Toft holds the other 25%.

49. *Diversification of Mass Media. Stevenson* owns 2.1% of the voting stock of Bloomington Broadcasting Corporation (BBC). BBC is the parent of the licensee of stations WJBC and WBNQ, Bloomington, Illinois; WKLQ(FM), Holland, Michigan; WGUW and WSKZ, Chattanooga, Tennessee; and WJCW and WQUT, Johnson City, Tennessee. He has timely pledged to divest his voting interest in his BBC stock if his Mahomet application is granted. He has no other media interests.

50. Neither *Alliance* nor either of its two principals have any interest in any medium of mass communications. However, Stuart Toft via Alliance Communications does provide engineering service to stations WITY, Danville, Illinois (10 hours per week), to WGCY-FM, Gibson City, Illinois (one day per month) and to WRTL, Rantoul, Illinois (on an as needed basis averaging one day per month).

51. *Best Practicable Service*: *Comparative Coverage*. Based on an engineering analysis, Stevenson and Alliance have agreed that there is no significance difference in their proposed areas and populations. They have further agreed that there are at least five full-time broadcast services available in all the areas which would receive service from either of the two.

52. *Integration of Ownership With Management*. Adlai Stevenson, a white non-hispanic male, claims 100% quantitative integration. He was born November 4, 1956 and currently resides in Chicago, Illinois. If his application is granted, Stevenson will move to Mahomet and work full-time (40 or more hours a week) as General Manager of the proposed station. In that capacity he will hire and supervise all staff-members, establish and implement the station's programming format, and direct its sales, promotional, business, technical, and public relations operations.

53. Stevenson received a Bachelor of Science in Communications Studies from Northwestern University in 1978, a Masters in Journalism (with an emphasis on broadcasting) from Northwestern in 1981, and is presently a candidate for a Masters in Business Administration from Northwestern.

54. From 1981-1982 Steven was a full-time reporter, and radio news anchor for stations WMBD(AM) and WMBD-TV, Peoria, Illinois. From 1982 to 1983, he was a reporter for WTNH-TV, New Haven, Connecticut; from 1983-1985, he was a reporter for station KARE(TV), Minneapolis; and from 1985 to 1987, he was a reporter for station WMAQ-TV, Chicago. All three stations were network affiliates, and at each Stevenson investigated, wrote, produced and presented television news stories on the air.

55. *Alliance*. Alliance claims 100% quantitative integration. They intend to integrate both general partners into the day-to-day operations of the proposed station.

56. First, they will integrate their 75% partner, *Louise Toft* into the day-to-day management of the station. She will be the full-time (at least 40 hours per week) General Manager. In that capacity she will supervise and be involved in all aspects of the day-to-day operations, but will be primarily responsible for the station's sales activities while Stuart Toft, her husband, will be primarily responsible for the station's programming and technical operations. She currently works about 50 hours a week with Alliance Communications. But she says that when the FM station begins operations she will reduce her involvement with Alliance Communications to no more than five hours per week.

57. Louise Toft was born on March 1, 1940 in Exeter, New Hampshire. She graduated in 1962 from Illinois Weslayan University in Bloomington, Illinois with a Bachelor of Science in English and a journalism minor.

58. She has resided within the station's proposed service area since 1962, when she moved to the area with her first husband (who died in 1974). She lived in Urbana from 1962 to 1977; in Savoy from 1977 to 1982; and in Champaign since 1982. When she resided in Urbana she was elected to serve on the Urbana Township Board for a four year term (1973-1977).

59. From 1963 to 1977, Mrs. Toft was employed full-time in broadcasting at stations WILL(AM) and (FM) in Urbana. From 1963-1966, she wrote and produced women's and children's programming; from 1966 to 1975, she researched, wrote, and produced a variety of documentaries and investigative reports. In 1975 through 1976, she hosted a morning program, presented dance and movie reviews, announced music programming, and conducted interviews on the arts. In June 1976, she became a full-time member of the station's news staff, a position she held through 1977.

60. She married Stuart Toft in 1982, and has worked full-time at Alliance Communications (his sole proprietorship) since then. She puts in a 50-hour week. About half of her 50 hour week is spent in the field where she personally installs and maintains telephone systems for Alliance Communications customers and trains their employees to use the installed systems. The other 25 hours is spent coordinating the field work performed by three other employees, negotiating sales contracts, and designing telephone systems to be covered by those contracts. Mrs. Toft says that if and when the broadcast station begins operations, she will reduce the time committed to Alliance Communications to no more than five hours per week.

61. Louise Toft claims white non-hispanic female enhancement.

62. Alliance also plans to integrate their 25% partner, Stuart Toft into the day-to-day management of the station. He will work at the proposed station full-time (at least 40 hours a week) as the station manager. In that capacity he will be primarily responsible for the station's programming and technical operations.

63. A white non-hispanic male, Stuart Toft was born in Davenport, Iowa on March 25, 1947. He first lived within the service area of Alliance's proposed station when he began attending the University of Illinois in Champaign in 1965. He studied at the University until 1968 when he did a two-year stint in the United States Army. He returned to Champaign in 1970 and has lived within the proposed station's service area since then. Mr. Toft graduated with a Bachelor of Science degree in Political Science from the University of Illinois in 1973. The record is silent on why it took Mr. Toft six years to obtain a four-year degree, and why a political science degree is a Bachelor of Science degree and not a Bachelor of Arts degree.

64. Mr. Toft worked as an announcer from 1965 to 1968 at stations WPGU-FM, Urbana, Illinois, and WDWS(AM) and (FM), in Champaign, Illinois. In the aggregate he worked at these stations more than 40 hours a week. From 1970 to 1972 he was a full-time newcaster for WDWS(AM) and (FM). From 1972 to 1974 he was also the chief engineer for WPGU-FM. From 1974 to 1987, Mr. Toft worked 40 hours a week at stations WILL(AM) and WILL(FM), Urbana, Illinois as the stations' news anchor.

65. In 1986, Mr. Toft was appointed to the Illinois Associated Press Broadcasters Advisory Committee, and served as its president. Between 1973-1977, he volunteered as the executive producer of an annual marathon organized to raise funds for local charities. Since 1980, Mr. Toft has moderated six debates between local candidates on a local cable television system.

66. In August, 1981, Stuart Toft founded Alliance Communications. Originally he only offered contract broadcast engineering services. But now that only constitutes about 20% of his business. About 60% of his business is in the sale, installation and maintenance of customer-owned telephone systems, and the other 20% is in the sale, installation and maintenance of two-way radio equipment. Before 1987, Toft devoted about 40 hours a week to Alliance Communications while also working 40 hours per week at WILL(AM) and (FM).

67. Since 1987, Mr. Toft spends an average of 45 to 55 hours at Alliance Communications. But he intends to reduce that amount of time to 15 or 20 hours if the Tofts are granted the construction permit.

68. Stevenson argues that the Tofts are only entitled to part-time integration, that their substantial commitment to Alliance Communications makes it unlikely they can fulfill their full-time integration pledges to the proposed FM station. There may be some merit to that argument in Stuart Toft's case since he is the sole proprietor of Alliance Communications. But Stevenson's argument will nevertheless be rejected. The Toft's plan to hire additional employees for Alliance Communications and reassign the duties of existing employees if they are granted a construction permit will be credited.

69. *Auxiliary Power.* Neither applicant has asserted a claim for auxiliary power.

ULTIMATE FINDINGS OF FACT AND PRELIMINARY CONCLUSIONS OF LAW

1. Two mutually-exclusive applicants seek a construction permit for a new FM station on Channel 290A in Mahomet, Illinois: Adlai E. Stevenson IV (Stevenson), and Louise B. Toft and Stuart A. Toft d/b/a Alliance Broadcasting of Champaign County (Alliance of the Tofts).

2. Evidence was adduced on three qualifying issues. Alliance faces two basic qualifying issues: a site availability issue, and a false site certification issue (Issues 1 and 2 *supra*.). The third factual issue is the standard comparative issue (Issue 3 *supra*.).

Alliance's Basic Qualifying Issues

3. We must first determine if Alliance is basically qualified to be a Commission license. This means that we must first resolve the site availability and the false site certification issues that have been designated against them. For it is axiomatic that only basic qualified applicants are entitled to a comparative analysis. *E.g., Las Americas Communications, Inc.*, 12 FCC Rcd 786, 61 RR 2d 1008, 1013 (Rev Bd. 1986), citing *Lewis Adelman*, 29FCC 1223, 18 RR 1062 (1960), *aff'd sub. nom. Guinan v. FCC*, 297 F. 2d 782 (D.C. Cir. 1961).

4. *Alliance's Site Availability Issue (Issue 1).* Alliance has failed to show that the transmitter site described in their November 20, 1987 amendment is available for their use. *See* Findings 5-13 *supra*. In fact the Tofts knew at the time that they filed their November 20, 1987 amendment that the Seely Johnston property wasn't available to them. Yet they did nothing about it until after Stevenson requested a site availability issue against them on September 26, 1988.[13] Since the Tofts have no transmitter site, they have failed to sustain their burden of proof under Issue 1 and they are not basically qualified to become a Commission licensee.

5. *Alliance's False Site Certification Issue (Issue 2).* Even *assuming* that Alliance had met its burden of proof under Issue 1, they must be denied under Issue 2. The record evidence shows that, in their November 20, 1987 amendment, the Tofts deliberately misrepresented that Seely Johnston's land was available to them for use as Alliance's transmitter site. *See* Findings 14-47 *supra*. Louise Toft even concocted a document to try to cover up that misrepresentation. She then gave false testimony at the hearing in an effort to hide the November 20, 1987 falsification. Thus, Alliance's principals have conducted themselves in a manner that doesn't befit a prospective broadcast permittee. They do not possess the necessary character qualifications, and so must be denied as lacking the basic qualifications to be a Commission licensee.

THE ULTIMATE CONCLUSION (ISSUE 4)

6. Under designated Issue 4, we must decide which of these applications should be granted. Stevenson is basically qualified to be a Commission licensee, Alliance is not. Alliance doesn't have a transmitter site, and its principals lack the character to be Commission licensees. (*See* Conclusions 1-5 *supra*.). So Alliance is eliminated from comparative consideration, and no conclusions need to be made under the standard comparative issue (Issue 3 *supra*.).[14] Stevenson is declared the winner.

SO, unless an appeal is taken from this Initial Decision or the Commission reviews it on its own motions,[15] Alliance Broadcasting of Champaign County's application (BPH-870910MT) IS DENIED; and Adlai E. Stevenson IV's application (BPH-870909MK) IS GRANTED subject to the following condition:

> Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.[16]

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller
Administrative Law Judge

FOOTNOTES

[1] In interest of uniformity and structural harmony, the issues have been renumbered.

[2] In his Hearing Designation Order the Chief, Audio Services Division called for Areas and Populations data. *See* 53 F.R. 32600 *supra*., para. 4. On November 3, 1988, Stevenson and Alliance requested acceptance of a joint stipulation " . . . that there is no significant difference in the area and populations" they would serve. That joint stipulation was accepted. *See* FCC 88M-3997, released November 22, 1988.

[3] Having already committed engineering errors on two previous occasions (see Findings 6 and 8 *supra*.) Stuart Toft was "concerned" about the eight-day deadline (Tr. 488).

[4] In addition to Stevenson at that time the other two opposing applicants were Middletown Developers, Inc. and Dybedock and Associates, Inc.

[5] The word "alleged" is used because at least twice during her testimony, Mrs. Toft referred to the unnamed landowner as a tenant. (Tr. 183, 261, 363).

[6] Both the Tofts are experienced broadcasters, and therefore are presumably familiar with transmitter site leases, and arrangements (see Alliance Exhibits 2-3; Tr. 377-379). In addition, Louise Toft checked out the land records at the County Court House, where she could well have obtained the information contained in the document she created as page 8 to Alliance Ex. 4. *See* Alliance Ex. 4, p. 2; Tr. 185.

[7] The Tofts are well aware of the importance of entering into written agreements. (*See* Tr. 164).

[8] Mrs. Toft called Ms. Duvall *after* she had given her (Duvall's) name in answer to a Stevenson interrogatory. *See* Stevenson Exhibits 6 and 7.

[9] In fact even the falsely certified engineering contained errors. *See* Finding 9 *supra*., and 53 F.R. 32600 published August 26, 1988 at paras. 2 and 5.

[10] Stated another way, when Lousie Toft represented she had contacted an unidentified landowner, that was pure fiction.

[11] The Tofts certified their transmitter site on November 17, 1987. So knowing that the Seely Johnston site was their last clear chance to meet the November 20, 1988 deadline, Stuart Toft probably started engineering that site as early as November 16, 1989 - even before his wife had contacted Seely Johnston the first time.

[12] Seely Johnston is obviously one of those individuals who takes other factors besides money into consideration when he leases or sells real estate.

[13] The reason the Tofts didn't try to secure a site between November 20, 1987, and October 26, 1988, was apparently because they had been properly advised by their counsel that November 20, 1987 was the last available opportunity they would have to correct deficiencies in their application.

[14] Note that comparative findings of fact have been made. *See* Findings 48-68 *supra*. It's only comparative conclusions that aren't needed. So if an appellate body disagrees with the conclusions under Issues 1 and 2, no remand will be required. Stated another way, findings of fact have been made on *all* the issues, and conclusions of law have been made on *all material* issues. *See WFPG, Inc.*, 33 FCC 673 (1962) at para. 13; *Alkima Broadcasting*, Inc., 30 FCC 932, 21 RR (1961) at Footnote 2; and *Sayger Broadcasting Co.*, 32 FCC 496, 22 RR 1059 (1962) at Footnote 7; 47 CFR 1.267(b); and 5 USC 557(c)(A).

[15] If exceptions aren't filed within 30 days, or the Commission doesn't review the case on its own motion, this Initial Deciision will become effective 50 days after its public release. *See* 47 CFR 1.276(d).

[16] *See* FCC 89M-1162 released April 13, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — I-T-C-89-039

For Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Conform Assignment of Capacity in the HAW-4/TPC-3 Cable System, as Previously Authorized, to the Assignment of Capacity Agreed to by the HAW-4/TPC-3 Owners in Amendatory Agreement No. 2, Signed November 3, 1988, to the Construction and Maintenance Agreement

CICI, INC. — I-T-C-89-079

For Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Acquire on an Ownership Basis and Operate Capacity in the HAW-4/TPC-3 Cable System for the Rendition of Authorized Services between the United States Mainland and Japan and Australia and Beyond

CICI, INC. — SCL-89-002

Application for Amended License to Land and Operate in United States Territory High Capacity Digital Submarine Cable Systems Extending Between and Among the United States Mainland, Hawaii, Guam and Japan

ORDER AND AUTHORIZATION

Adopted: September 26, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. On December 30, 1988, American Telephone and Telegraph Company (AT&T) filed an application with the Commission requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to conform the assignments of capacity previously authorized in the Hawaii-4/Transpacific-3 (HAW-4/TPC-3) high capacity digital submarine cable system to the assignment of capacity agreed to by the HAW-4/TPC-3 owners[1] in Amendatory Agreement No. 2, signed November 3, 1988, to the Construction and Maintenance Agreement (C&MA). The application was placed on public notice January 11, 1989. No comments were received in response.

2. On September 4, 1985, the HAW-4/TPC-3 joint applicants filed an application requesting authority under Section 214 of the Communications Act to construct and acquire capacity in the HAW-4/TPC-3 and Guam-Philippines-2 (GP-2) cable systems. In the application, the joint applicants indicated that they would revise the initial assignments of capacity detailed in the initialed HAW-4/TPC-3 C&MA before the C&MA was signed so that the document would reflect the final assignment of Minimum Assignable Units of Ownership (MAUOs) agreed to by the parties. Following grant of the application,[2] the parties agreed to some minor changes in their capacity assignments and signed the C&MA on January 22, 1986. The Commission approved the capacity assignments set forth in the C&MA on September 19, 1986.[3] On October 2, 1987, the parties signed Amendatory Agreement No. 1 to the C&MA, agreeing to additional minor adjustments in their capacity assignments. The Commission approved the further revisions to the capacity assignments in the C&MA on February 22, 1988.[4]

3. In its supplemental application, AT&T seeks authority to revise the current assignment of capacity in the HAW-4/TPC-3 cable system so that it will be in accord with Amendatory Agreement No. 2 signed by the parties on November 3, 1988. AT&T states that the parties agreed to revise the current assignments of capacity in the cable system in order to accommodate the requirements of entities admitted as new owners of HAW-4/TPC-3. It maintains that the revisions represent no material change in the basis for the HAW-4/TPC-3 owners' initial Section 214 application and subsequent authorizations.[5]

4. On March 20, 1989, CICI, Inc. (CICI) filed applications requesting that the HAW-4/TPC-3 landing license granted to the USISCs on December 27, 1985 (File No. SCL-85-003) be amended to add CICI as a licensee (File No. SCL-89-002) and that it be granted Section 214 authority to acquire and operate an ownership interest in the HAW-4/TPC-3 cable system (File No. I-T-C-89-079). These applications were placed on public notice on March 29, 1989. No comments were received.

5. CICI originally sought authority to join the USISCs, with a 1.4 percent ownership interest in HAW-4/TPC-3 pursuant to Amendatory Agreement No. 2 of the C&MA. However, on May 10, 1989, AT&T and CICI filed a joint letter amending CICI's application to reduce CICI's request from a 1.4 percent ownership interest to half interest in a single (one) MAUO in Segment B of HAW-4/TPC-3. The parties explain that CICI no longer has a need for the capacity, but could not make this determination until after the execution of the HAW-4/TPC-3 Amendatory Agreement No. 2, signed November 3, 1988, to the C&MA. The capacity in excess of the half interest in one MAUO in Segment B of HAW-4/TPC-3 will remain with AT&T.

6. Further, in a joint letter of July 11, 1989, AT&T and CICI state that the half interest in one MAUO in Segment B of HAW-4/TPC-3 for which CICI seeks authorization is to be acquired on an indefeasible right of user (IRU) basis from AT&T, rather than on a direct ownership basis. The parties request that CICI's applications in File Nos. SCL-89-002 and I-T-C-89-079 be withdrawn.

7. After consideration of AT&T's request, we find that grant of its instant application will serve the public interest. AT&T's request is based on the consent of HAW-4/TPC-3 joint owners. Also, there is no material change in the basis for the capacity assigned in Amendatory Agreement No. 2 and the capacity assigned in previous authorizations. We further find that the joint request of AT&T and CICI is within the sound business judgment of the parties. CICI's interest in HAW-4/TPC-3 on an IRU basis negates any basis for it to be listed as an owner of the system.

8. Accordingly, IT IS ORDERED that applications File Nos. SCL-89-002 and I-T-C-89-079 ARE DISMISSED and CICI is authorized to acquire and operate a half-MAUO in Segment B of the HAW-4/TPC-3 cable system on an IRU basis. The ownership interest in capacity requested in CICI's application File No. I-T-C-89-079 will remain with AT&T.

9. IT IS FURTHER ORDERED that application File No. I-T-C-89-039 IS GRANTED with modification, and AT&T is authorized to conform the assignment of capacity in the HAW-4/TPC-3 cable system as summarized in the modified Schedules B, C and D appended hereto.

10. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

MODIFIED SCHEDULE B

VOTING INTERESTS IN THE HAW-4/TPC-3 CABLE SYSTEM*

PARTIES	VOTING INTEREST PERCENTAGE**
OTC (Australia)	0.34809
JTB (Brunei)	0.19959
TELEGLOBE (Canada)	0.64266
FT (France)	0.20862
DBP (Federal Rep. of Germany)	1.07187
CWHK (Hong Kong)	3.34950
IDC (Japan)	0.85496
ITJ (Japan)	2.40457
KDD (Japan)	23.42285
KTA (Korea)	4.21253
TCNZ (New Zealand)	0.09635
CAPWIRE (Phillippines)	0.03222
ETPI (Phillippines)	0.07371
GMCR (Phillippines)	0.05782
PHILCOM (Phillippines)	0.13159
PLDT (Phillippines)	4.53649
TELECOMS (Singapore)	0.90324
TLFN (Spain)	0.32565
ITDC (Taiwan)	4.81913
BT PLC (U.K.)	3.11140
MCL (U.K.)	0.80152
AT&T	35.34307
AT&T	1.39306
FTCC	0.44058
HTC	1.07936
MCII	4.66064
RCA GLOBCOM	1.16242
TRT	0.28110
US SPRINT	2.59734
WUW	1.43807
TOTAL:	100.00000

Notes to Schedule B

* The voting interest percentages set forth in Schedule B are derived from the Segment B and Subsegment D1, D2 and D3 ownership interest percentages set forth in Schedule C weighted by the estimated costs of each such segment and subsegment and expressed as a percentage of the estimated total costs of such segment and subsegments as noted in Annex 2.

** The voting interest percentages set forth in Schedule B will be adjusted in accordance with the procedures to be determined by the B&B Subcommittee.

MODIFIED SCHEDULE C

OWNERSHIP ONTERESTS AND ALLOCATION OF CAPITAL, OPERATING AND MAINTENANCE COSTS OF SEGMENT B AND SUBSEGMENTS D1, D2, AND D3; AND ALLOCATION OF CAPITAL, OPERATING, AND MAINTENANCE COSTS OF SEGMENTS A, E, AND F AND SUBSEGMENTS C1 AND C2 OF THE HAW-4/TPC-3 CABLE SYSTEM

PARTIES	SEGMENT A SEGMENT B SUBSEGMENT C1 (PERCENT)	SUBSEGMENT C2 SUBSEGMENT D1 (PERCENT)	SUBSEGMENT D2 SEGMENT E (PERCENT)	SEGMENT F SUBSEGMENT D3 (PERCENT)
OTC(Australia)	1.04497	0.00000	0.00000	0.00000
JTB(Brunei)	0.19841	0.21825	0.02024	0.38254
TELEGLOBE(Canada)	0.00000	1.01190	1.15278	0.52698
FT(France)	0.21164	0.21164	0.32937	0.02196
DBP(Fed.Rep.of Germany)	1.10450	1.10450	1.31746	0.51601
CWHK(Hong Kong)	3.27381	3.53175	3.69206	2.44048
IDC(Japan)	0.84656	0.84656	0.28783	1.69312
ITJ(Japan)	2.38095	2.38095	0.80952	4.76190
KDD(Japan)	21.34259	22.35450	38.02606	13.43347
KTA(Korea)	4.14683	4.27249	7.18452	0.09220
TCNZ(New Zealand)	0.26455	0.01323	0.01098	0.01098
CAPWIRE(Philippines)	0.03308	0.03307	0.00675	0.06164
ETPI(Philippines)	0.06614	0.08598	0.00450	0.14722
GMCR(Philippines)	0.04630	0.06614	0.01349	0.12328
PHILCOM(Philippines)	0.07275	0.08598	0.21587	0.35860
PLDT(Philippines)	4.72222	5.04630	0.00000	8.37685
TELECOMS(Singapore)	0.93254	0.97884	0.06746	1.69233
TLFN (Spain)	0.33730	0.33730	0.36230	0.19762
ITDC (Taiwan)	4.89418	5.21825	0.47222	9.13452
BT PLC(U.K.)	3.17460	3.17460	2.38095	3.69841
MCL (U.K.)	0.79365	0.79365	0.26984	1.58730
AT&T	33.62434	36.56746	34.39061	37.36587
AT&T	1.39550	1.38889	1.25794	1.58730
FTCC	0.46296	0.42989	0.45172	0.39683
HTC	0.79365	1.25661	1.12302	1.23280
MCII	6.91138	3.67725	2.96997	3.80437
RCA GLOBCOM	1.20370	1.15079	0.92500	1.40807
TRT	0.29762	0.27778	0.41296	0.06164
US SPRINT	3.82275	2.10317	0.33730	3.82857
WU WORLDCOM	1.60053	1.38228	1.50728	1.05714
TOTAL	100.00000	100.00000	100.00000	100.00000

Notes to Schedule C

The ownership interests and allocation percentages set forth in Schedule C for segments and subsegments of the HAW-4/TPC-3 Cable System are derived using the assigned MAUOs for Schedule D, as follows:

For a party

$$\text{Segment B Percent} = \frac{\text{MAUO Half Interests in Segment B}}{15120}$$

$$\text{Subsegment D1 Percent} = \frac{\text{MAUO Half Interests in Subseg. D1 Fiber H-J}}{7560} \times 0.5 + \frac{\text{MAUO Half Interests in Subseg. D1 Fiber H-G}}{7560} \times 0.5$$

$$\text{Subsegment D2 Percent} = \frac{\text{MAUO Half Interests in Subseg. D2 Fiber H-J}}{7560} \times 0.83 + \frac{\text{MAUO Half Interest in Subseg. D2 Fiber J-G}}{7560} \times 0.17$$

$$\text{Subsegment D3 Percent} = \frac{\text{MAUO Half Interests in Subseg. D3 Fiber H-G}}{7560} \times 0.83 + \frac{\text{MAUO Half Interest in Subseg. D3 Fiber J-G}}{7560} \times 0.17$$

The cost of each of the two lightguide pairs in Subsegment D1 is allocated on a 50-50% basis. The cost of the lightguide pair between Guam and Japan in Subsegments D2 and D3 is 17% of the total cost of Subsegments D2 and D3.

For purposes of this Agreement, Transpacific shall own and be responsible for the capital, operating, and maintenance costs of 34.39061% of Subsegment D2 of the HAW-4/TPC-3 Cable System within Japan, including its territorial waters. AT&T shall own and be responsible for the capital, operating, and maintenance costs of the remainder of the 34.39061% of Subsegment D2. Transpacific shall also be responsible for the capital, operating, and maintenance costs of 34.39061% of Subsegment D2. Transpacific shall also be responsible for the capital, operating, and maintenance costs of 34.39061% of Segment E of the HAW-4/TPC-3 Cable System.

MODIFIED SCHEDULE D

SCHEDULE B PAGE 1 OF 7
U.S. MAINLAND - HAWAII LIGHTGUIDE PAIRS

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SEGMENT B

MAUOS ASSIGNED FOR JOINT USE

PARTIES	OTC	JTB	CWNC	IDC	ITJ	KDD	KTA	TCNZ	CAPWIRE	ETPI	GNCR	PHILCOM	PLDT	TELECOMS	ITDC	BT PLC	RCA GLOBCOM	
FT	0	0	0	0	0	30	0	0	0	0	0	0	2	0	0	0	0	
DBP	0	4	30	0	0	69	21	0	0	1	0	0	12	0	30	0	0	
TLFN	0	0	0	0	0	30	3	0	0	0	0	0	8	0	10	0	0	
BT PLC	0	15	30	0	0	210	30	0	0	0	0	0	12	30	30	0	0	
MCL	0	0	30	0	0	90	0	0	0	0	0	0	0	0	0	0	0	
AT&T	80	11	300	0	270	2031	531	28	0	0	0	0	680	60	540	125	30	
AT&T	1	0	0	30	30	150	0	0	0	0	0	0	0	0	0	0	0	
FTCC	5	0	4	30	0	30	0	0	0	0	0	0	0	0	0	0	0	
NTC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
NCII	7	0	30	0	30	330	30	2	0	4	0	0	0	30	30	0	0	
RCA GLOBCOM	14	0	0	0	0	47	2	0	0	0	0	0	0	2	2	0	0	
TRT	2	0	3	0	0	30	4	0	0	0	0	0	0	1	0	0	0	
US SPRINT	20	0	30	30	0	90	4	0	0	0	0	0	0	18	90	0	0	
WAM	29	0	30	30	30	90	5	5	1	3	7	2	0	0	0	0	0	

SUBTOTAL	6846

MAUOS ASSIGNED FOR SOLE USE

PARTIES	
AT&T	200
NTC	60
NCII	271
RCA GLOBCOM	32
US SPRINT	150
WAM	1

SUBTOTAL	714
TOTAL	7560

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	EQUIV. 1/2 MAUOS
OTC	158	0	158
JTB	30	0	30
FT	32	0	32
DBP	167	0	167
CWNC	495	0	495
IDC	128	0	128
ITJ	360	0	360
KDD	3227	0	3227
KTA	627	0	627
TCNZ	40	0	40
CAPWIRE	5	0	5
ETPI	10	0	10
GNCR	7	0	7
PHILCOM	11	0	11
PLDT	714	0	714
TELECOMS	141	0	141
TLFN	51	0	51
ITDC	740	0	740
BT PLC	480	0	480
MCL	120	0	120
AT&T	4684	200	5084
AT&T	211	0	211
FTCC	70	0	70
NTC	0	60	120
NCII	503	271	1045
RCA GLOBCOM	118	32	182
TRT	45	0	45
US SPRINT	278	150	578
WAM	240	1	242
TOTAL			15120

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D1

MAUOS ASSIGNED FOR JOINT USE

PARTIES	JTB	CWK	IDC	ITJ	KDD	CAPWIRE	ETPI	GNCR	PHILCOM	PLDT	TELECOMS	ITDC	AT&T	RCA GLOBCOM	
TELEGLOBE	3	0	0	0	0	0	1	0	0	19	7	18	0	0	
FT	0	0	0	0	0	0	0	0	0	2	0	0	0	0	
DBP	4	0	0	0	0	0	1	0	0	12	0	30	0	0	
TCNZ	0	0	0	0	0	0	0	0	0	0	0	1	0	0	
TLFN	0	0	0	0	0	0	0	0	0	8	0	10	0	0	
BT PLC	15	0	0	0	90	0	0	0	0	12	30	30	123	0	
MCL	0	30	0	0	90	0	0	0	0	0	0	0	0	0	
AT&T	11	150	0	270	90	0	0	0	0	480	60	540	0	30	
AT&T	0	0	30	30	60	0	0	0	0	0	0	0	0	0	
FTCC	0	0	30	0	0	0	0	0	0	0	0	0	0	0	
NTC	0	0	0	0	0	0	0	0	0	30	0	30	0	6	
MCII	0	0	6	30	150	0	0	0	0	0	30	30	0	0	
RCA GLOBCOM	0	0	0	0	0	0	0	0	11	0	2	2	0	0	
TRT	0	0	0	0	0	4	0	0	0	0	1	0	0	0	
US SPRINT	0	30	30	0	90	0	0	0	0	0	18	90	0	0	
WAM	0	0	30	30	0	1	5	10	2	0	0	8	0	0	
SUBTOTAL															3201

MAUOS ASSIGNED FOR SOLE USE

PARTIES	
AT&T	475
NTC	17
MCII	30
RCA GLOBCOM	29
US SPRINT	30
SUBTOTAL	579
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	EQUIV. 1/2 MAUOS
JTB	33	0	33
TELEGLOBE	48	0	48
FT	2	0	2
DBP	47	0	47
CWK	210	0	210
IDC	128	0	128
ITJ	360	0	360
KDD	570	0	570
TCNZ	1	0	1
CAPWIRE	5	0	5
ETPI	13	0	13
GNCR	10	0	10
PHILCOM	13	0	13
PLDT	763	0	763
TELECOMS	148	0	148
TLFN	18	0	18
ITDC	789	0	789
BT PLC	300	0	300
MCL	120	0	120
AT&T	1954	473	2900
AT&T	120	0	120
FTCC	30	0	30
NTC	66	17	100
MCII	256	30	316
RCA GLOBCOM	51	29	109
TRT	5	0	5
US SPRINT	258	30	318
WAM	84	0	84
TOTAL			7560

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D1

MAUOS ASSIGNED FOR JOINT USE

PARTIES	CWNK	KDD	KTA	
TELEGLOBE	30	69	6	
FT	0	30	0	
DBP	30	69	21	
TCNZ	0	0	1	
TLFN	0	30	3	
BT PLC	30	120	30	
AT&T	150	1948	531	
AT&T	0	90	0	
FTCC	4	30	1	
NTC	8	70	12	
MCII	30	180	30	
RCA GLOBCOM	9	54	2	
TRT	3	30	4	
WUI	30	90	5	
SUBTOTAL				3780

MAUOS ASSIGNED FOR SOLE USE

NONE	
SUBTOTAL	0
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	MAUO 1/2 INTERESTS
TELEGLOBE	105	0	105
FT	30	0	30
DBP	120	0	120
CWNK	324	0	324
KDD	2810	0	2810
KTA	646	0	646
TCNZ	1	0	1
TLFN	33	0	33
BT PLC	180	0	180
AT&T	2629	0	2629
AT&T	90	0	90
FTCC	35	0	35
NTC	90	0	90
MCII	240	0	240
RCA GLOBCOM	65	0	65
TRT	37	0	37
WUI	125	0	125
			7560

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ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D2

MAUOS ASSIGNED FOR JOINT USE

PARTIES	CWNK	KDD	KTA	
TELEGLOBE	30	69	6	
FT	0	30	0	
DBP	30	69	21	
TCNZ	0	0	1	
TLFN	0	30	3	
BT PLC	30	120	30	
AT&T	150	1948	531	
ATRT	0	90	0	
FICC	4	30	1	
HTC	8	70	12	
MCII	30	180	30	
RCA GLOBCOM	9	54	2	
TRT	3	30	4	
WUI	30	90	5	
SUBTOTAL				3780

MAUOS ASSIGNED FOR SOLE USE

NONE	
SUBTOTAL	0
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	MAUO 1/2 INTERESTS
TELEGLOBE	105	0	105
FT	30	0	30
DBP	120	0	120
CWNK	324	0	324
KDD	2810	0	2810
KTA	646	0	646
TCNZ	1	0	1
TLFN	33	0	33
BT PLC	180	0	180
AT&T	2629	0	2629
ATRT	90	0	90
FICC	35	0	35
HTC	90	0	90
MCII	240	0	240
RCA GLOBCOM	65	0	65
TRT	37	0	37
WUI	125	0	125
			7560

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D2

MAUOS ASSIGNED FOR JOINT USE

PARTIES	CWNK	IDC	ITJ	KDD	KTA
JTB	0	0	0	7	2
CAPWIRE	0	0	0	2	1
ETPI	0	0	0	2	0
GNCR	0	0	0	5	1
PHILCOM	0	0	0	90	6
TELECOMS	0	0	0	30	0
ITDC	0	0	0	180	30
BT PLC	0	0	0	180	0
MCL	30	0	0	90	0
AT&T	0	0	270	2100	0
AT&T	0	30	30	60	0
FTCC	0	30	0	0	0
NTC	0	0	0	60	0
MCII	0	0	30	111	0
RCA GLOBCOM	0	0	0	95	1
TRT	0	0	0	3	0
US SPRINT	30	30	0	90	0
WAW	0	30	30	0	0
SUBTOTAL					3780

MAUOS ASSIGNED FOR SOLE USE

NONE	
SUBTOTAL	0
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	MAUO 1/2 INTERESTS
JTB	9	0	9
CWNK	60	0	60
IDC	128	0	128
ITJ	360	0	360
KDD	3191	0	3191
KTA	41	0	41
CAPWIRE	3	0	3
ETPI	2	0	2
GNCR	6	0	6
PHILCOM	96	0	96
TELECOMS	30	0	30
ITDC	210	0	210
BT PLC	180	0	180
MCL	120	0	120
AT&T	2458	0	2458
AT&T	120	0	120
FTCC	30	0	30
NTC	60	0	60
MCII	149	0	149
RCA GLOBCOM	96	0	96
TRT	3	0	3
US SPRINT	150	0	150
WAW	60	0	60
			7560

SCHEDULE D PAGE 6 OF 7
HAWAII-GUAM LIGHTGUIDE PAIR

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D3

MAUOS ASSIGNED FOR JOINT USE

PARTIES	JTB	CWK	IDC	ITJ	KDD	CAPVIRE	ETPI	GNCR	PHILCOM	PLDT	TELECOMS	ITDC	AT&T	RCA GLOBCOM	
TELEGLOBE	3	0	0	0	0	0	1	0	0	19	7	18	0	0	
FT	0	0	0	0	0	0	0	0	0	2	0	0	0	0	
BBP	4	0	0	0	0	0	1	0	0	12	0	30	0	0	
TCNZ	0	0	0	0	0	0	0	0	0	0	0	1	0	0	
TLFN	0	0	0	0	0	0	0	0	0	6	0	10	0	0	
BT PLC	15	0	0	0	90	0	0	0	0	12	30	30	123	0	
MCL	0	30	0	0	90	0	0	0	0	0	0	0	0	0	
AT&T	11	150	0	270	90	0	0	0	0	600	60	540	0	30	
ATET	0	0	30	30	60	0	0	0	0	0	0	0	0	0	
FTCC	0	0	30	0	0	0	0	0	0	0	0	0	0	0	
NTC	0	0	0	0	0	0	0	0	0	30	0	30	0	0	
MCII	0	0	6	30	150	0	0	0	0	0	30	30	0	0	
RCA GLOBCOM	0	0	0	0	0	0	0	0	11	0	2	2	0	0	
TRT	0	0	0	0	0	4	0	0	0	0	1	0	0	0	
US SPRINT	0	30	30	0	90	0	0	0	0	0	18	90	0	0	
WAN	0	0	30	30	0	1	3	10	2	0	0	8	0	0	
SUBTOTAL															3201

MAUOS ASSIGNED FOR SOLE USE

PARTIES	
AT&T	473
NTC	17
MCII	30
RCA GLOBCOM	29
US SPRINT	30
SUBTOTAL	579
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	EQUIV. 1/2 MAUOS
JTB	33	0	33
TELEGLOBE	48	0	48
FT	2	0	2
BBP	47	0	47
CWK	210	0	210
IDC	128	0	128
ITJ	360	0	360
KDD	570	0	570
TCNZ	1	0	1
CAPVIRE	5	0	5
ETPI	13	0	13
GNCR	10	0	10
PHILCOM	13	0	13
PLDT	763	0	763
TELECOMS	148	0	148
TLFN	18	0	18
ITDC	789	0	789
BT PLC	300	0	300
MCL	120	0	120
AT&T	1954	473	2900
ATET	120	0	120
FTCC	30	0	30
NTC	66	17	100
MCII	256	30	316
RCA GLOBCOM	51	29	109
TRT	5	0	5
US SPRINT	258	30	318
WAN	84	0	84
TOTAL			7560

ASSIGNMENT OF MINIMUM ASSIGNABLE UNITS OF OWNERSHIP (MAUOS)
IN THE HAW-4/TPC-3 CABLE SYSTEM

SUBSEGMENT D3

MAUOS ASSIGNED FOR JOINT USE

PARTIES	CWK	IDC	ITJ	KDD	KTA
JTB	0	0	0	7	2
CAPWIRE	0	0	0	2	1
ETPI	0	0	0	2	0
GMCR	0	0	0	5	1
PHILCOM	0	0	0	90	6
TELECOMS	0	0	0	30	0
ITDC	0	0	0	180	30
BT PLC	0	0	0	180	0
MCL	30	0	0	90	0
AT&T	0	0	270	2188	0
AT&T	0	30	30	60	0
FTCC	0	30	0	0	0
NTC	0	0	0	60	0
MCII	0	8	30	111	0
RCA GLOBCOM	0	0	0	93	1
TRT	0	0	0	3	0
US SPRINT	30	30	0	90	0
WUW	0	30	30	0	0
SUBTOTAL					3780

MAUOS ASSIGNED FOR SOLE USE

NONE	
SUBTOTAL	0
TOTAL	3780

SUMMARY

PARTIES	JOINTLY ASSIGNED	SOLELY ASSIGNED	MAUO 1/2 INTERESTS
JTB	9	0	9
CWK	60	0	60
IDC	128	0	128
ITJ	360	0	360
KDD	3191	0	3191
KTA	41	0	41
CAPWIRE	3	0	3
ETPI	2	0	2
GMCR	6	0	6
PHILCOM	96	0	96
TELECOMS	30	0	30
ITDC	210	0	210
BT PLC	180	0	180
MCL	120	0	120
AT&T	2458	0	2458
AT&T	120	0	120
FTCC	30	0	30
NTC	60	0	60
MCII	149	0	149
RCA GLOBCOM	94	0	94
TRT	3	0	3
US SPRINT	150	0	150
WUW	60	0	60
			7560

FOOTNOTES

[1] The HAW-4/TPC-3 owners include AT&T, FTC Communications, Inc, GTE Hawaiian Telephone Company, Incorporated, MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, U.S. Sprint Communications Company and WU World Communications (the United States International service carriers (USISCs)).

[2] American Telephone and Telegraph Co. *et. al.*, File No. I-T-C-85-219, released Jan. 7, 1986.

[3] American Telephone and Telegraph Co., *et. al.*, File No. I-T-C-86-112, released Sept. 19, 1986.

[4] American Telephone and Telegraph Co., 3 FCC Rcd 940 (1988).

[5] AT&T states that the remaining HAW-4/TPC-3 joint applicants, with the exception of GTE Hawaiian Telephone Company, Inc., are classified as "non-dominant carriers" and are not required to obtain authorization from the Commission in order to revise their assignments. However, we note that at the time of the agreement, FTCC was classified as a dominant carrier, but effective August 28, 1989, is classified as non-dominant except for service to France. *See* FTC Communications, Inc., 4 FCC Rcd 1283 (1989), FTC Communications, Inc., 4 FCC Rcd 1369 (1989) and FTC Communications, 4 FCC Rcd 5633 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE & TELEGRAPH CO. File No. I-T-C-89-136

Application for authority to acquire and operate facilities in the HAW-4 Cable.

ORDER AND AUTHORIZATION

Adopted: September 27, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on July 14, 1989 by American Telephone and Telegraph Co., (AT&T) requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire, activate and operate half interests in up to 1,170 minimum assignable units of ownership (MAUOs) in the HAW-4 cable for the provision of its authorized services between points in or reached via both the State of Hawaii and the U.S. Mainland and beyond. The application was placed on public notice on July 19, 1989. No comments were received. Upon consideration of the application, we find that authorization of the requested services and facilities is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C- 89-136 IS GRANTED, and AT&T is authorized to:

a. acquire from its correspondent in Japan (KDD), on an Indefeasible Right of User (IRU) basis, a one-half interests in 180 MAUOs in the HAW-4 cable;

b. lease from its correspondent in Taiwan (ITDC) a one-half interests in 360 MAUOs in the HAW-4 cable;

c. lease from its correspondent in Korea (KTA) a one-half interests in 270 MAOUs in the HAW-4 cable;

d. acquire from its correspondent in the Philippines (PLDT) on an ownership basis a one-half interests in 360 MAUOs in the HAW-4 cable; and

e. use these facilities to provide AT&T's regularly authorized services between points in or reached via both the State of Hawaii and the U.S. Mainland and beyond.[1]

3. This authorization should not be construed as a Commission determination as to the need for a HAW-5 cable system. No application for the HAW-5 cable system has yet been filed with the Commission.

4. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] AT&T states that: (i) the IRU agreement covering the facilities in a subparagraph 2 (a) will remain in effect until 30 days following the ready for service (RFS) date of the HAW-5 cable system; (ii) the lease agreements covering the facilities in subparagraphs 2(b) and 2(c) will remain in effect until December 31, 1993 or such earlier date as AT&T and its correspondents may agree; and (iii) as compensation for the transfer of ownership of the facilities in subparagraph 2(d) AT&T's correspondent (PLDT) will receive capacity in the HAW-5 cable system of equivalent monetary value.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Alpha Lyracom, d/b/a PAN AMERICAN SATELLITE — CSS-84-004-P(LA)

Final authority to operate an international fixed-satellite system for communication between specified geographical areas

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: September 27, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. In the Separate Systems decision,[1] the Commission stated that it would not issue final authority for operation of any separate system until one or more foreign authorities had authorized use of the system and the Department of State had informed the Commission that the United States had fulfilled its obligations under Article XIV(d) of the INTELSAT Agreement. The Commission's authorizations to separate system applicants have been so conditioned. By this order we find that Alpha Lyracom d/b/a Pan American Satellite (PAS) has fulfilled these conditions with respect to the countries specified below and may begin to operate its facilities for communications to those countries.

2. PAS has previously been authorized to construct and operate a subregional Western Hemisphere satellite system,[2] which includes eighteen 4/6 GHz transponders and six 11/14 GHz transponders as its initial satellite at the 45 degree W.L. orbital location.[3] On September 30, 1987, the Commission authorized PAS to begin operation of its five 4/6 GHz transponders on the PAS-1 satellite for communications between the United States and Peru;[4] on October 28, 1988, the Commission also authorized PAS to operate its five 4/6 GHz transponders on the PAS-1 satellite to provide communications capacity between the United States and the Dominican Republic and Costa Rica, and to operate its six 11/14 transponders on the PAS-1 satellite to provide communication capacity between the United States and the United Kingdom, Ireland, Federal Republic of Germany, Sweden and Luxembourg;[5] and on July 17, 1989, the Commission further authorized PAS to operate its five 4/6 GHz tranponders on the PAS-1 satellite to provide communications capacity between the United States and Brazil, Guatemala, and Honduras, and to operate its six 11/14 GHz transponders on the PAS-1 satellite to provide communications capacity between the United States and France and Monaco.[6]

3. On September 18, 1989, we received a letter from the Department of State informing us that all U.S. international consultative and informative obligations under Article XIV(d) of the INTELSAT Agreement with respect to the proposed PAS services to Portugal, Argentina, and the Bahamas have been fulfilled.

4. Accordingly, IT IS ORDERED that the conditions for final authorization imposed on PAS' conditional construction permit have been satisfied and PAS may proceed to operate:

1) five 4/6 GHz transponders on the PAS-1 satellite to provide communications capacity between the United States and Argentina and the Bahamas consistent with the INTELSAT consultations completed by the Fourteenth Assembly of Parties and the 80th Board of Governors, and

2) six 11/14 GHz transponders on the PAS-1 satellite to provide communications capacity between the United States and Portugal and the Bahamas consistent with the INTELSAT consultation completed by the Fourteenth Assembly of Parties and 80th Board of Governors.[7]

5. IT IS FURTHER ORDERED that the operation of PAS' system is restricted to the provision of capacity through the sale or long-term lease of transponder capacity for communications not interconnected with the public-switched message networks (except for emergency restoration service).

6. IT IS FURTHER ORDERED that this authorization only applies to the provision of communications capacity between the United States and the countries specified in paragraphs 2 and 4 above. Any communications between the United States and other locations, as well as the provision of capacity for domestic communications within Latin American countries, will require additional consultation under Article XIV.

7. IT IS FURTHER ORDERED that the authority granted herein is specifically conditioned on operation of the PAS network in accordance with the parameters summarized and conditions described in Attachment No. 1 to AP-11-10E, "Report by the Board of Governors to the Eleventh Assembly of Parties Pursuant to Article XIV(d) on the PanAmSat Network" (February 1987).

8. IT IS FURTHER ORDERED that the Commission will retain jurisdiction over the use of all space segment within the PAS system to ensure compliance with the restrictions stated above.

9. IT IS FURTHER ORDERED that prior to use of any other transponders on the satellite, or use of the satellite for communications to or from any points other than those specified in paragraphs 2 and 4, PAS shall obtain further authority from the Commission; and prior to use of the satellite for communications to or from any INTELSAT country other than those listed above, PAS shall receive verification from that country that it has fulfilled its obligation under Article XIV(c) or (d) of the INTELSAT Agreement and PAS shall forward such verification to the Commission.

10. IT IS FURTHER ORDERED that, except as specified herein, the terms and conditions specified in PAS' construction authority still apply.

11. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applica-

tions for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Establishment of Satellite Systems Providing International Communcations, 101 FCC 2d 1046, 1178 (1985).

[2] Pan American Satellite Corporation, 101 FCC 2d 1318 (1985).

[3] Pan American Satellite Corporation, FCC 86-257 (released May 21, 1986).

[4] Pan American Satellite, 2 FCC Rcd 7011 (1987).

[5] Pan American Satellite, 3 FCC Rcd 6474 (1988).

[6] Pan American Satellite, 4 FCC Rcd 5751 (1989).

[7] *See* INTELSAT Assembly of Parties Record of the Fourteenth (Extraordinary) Meeting, AP-14-3-E (July 1989), and INTELSAT Board of Governors' Record of 80th Meeting, BG-80-3E (June 1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Applications of

COMMUNICATIONS SATELLITE CORPORATION — I-T-C-89-076

For Authority Under Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act and Section 214 of the Communications Act of 1934, as amended, to Provide Aeronautical Service via the INMARSAT System

COMMUNICATIONS SATELLITE CORPORATION — CSG-89-058-ML

For Authority Under Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act and Title III of the Communications Act of 1934, as amended, to Install and Operate Equipment at its Santa Paula, California (KA-31) Coast Earth Station to Provide Aeronautical Service via the INMARSAT System

COMMUNICATIONS SATELLITE CORPORATION — CSG-89-059-ML

For Authority Under Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act and Title III of the Communications Act of 1934, as amended, to Install and Operate Equipment at its Southbury, Connecticut (WA-28) Coast Earth Station to Provide Aeronautical Service via the INMARSAT System

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: September 28, 1989; Released: October 5, 1989

By the Chief, Common Carrier Bureau:

1. The Communications Satellite Corporation (Comsat) has filed the above-captioned applications requesting authority pursuant to Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act, 47 U.S.C. Sections 752 and 753(c)(Maritime Satellite Act), and Section 214 and Title III of the Communications Act of 1934, as amended, 47 U.S.C. Section 214, to provide aeronautical services via the INMARSAT System, and to install and operate equipment at both its Santa Paula, California (KA-31) and Southbury, Connecticut (WA-28) coast earth stations to enable these earth stations to operate with the international aeronautical mobile satellite system being established by INMARSAT. The applications were placed on public notice on March 17, 1989. Comments were received from American Mobile Satellite Corporation (AMSC), Ball Communications Systems Division (Ball), E-Systems, Inc. (E-Systems) and Ford Aerospace Corporation (Ford). Aeronautical Radio, Inc. (Arinc) filed separate Petitions to Deny and Comments in response to Comsat's Section 214 application and Title III applications. Comsat opposed Arinc's Petitions to Deny and replied to the other filings. We grant the applications for the reasons set forth below.

THE APPLICATIONS

2. In application File No. I-T-C-89-076, Comsat seeks authority to provide demand assigned aeronautical satellite services via the INMARSAT system between Comsat's Southbury, Connecticut (WA-28) and Santa Paula, California (KA-31) coast earth stations and aircraft in international flight. Comsat states that it is filing its Section 214 application in its capacity as U.S. signatory and operating entity to INMARSAT. In applications File Nos. CSG-89-058-ML and CSG-89-059-ML, Comsat seeks authority to operate its coast earth stations at Santa Paula, California and Southbury, Connecticut with the INMARSAT system to provide aeronautical services. Comsat was previously granted a Section 319(d) waiver by the Commission to, at its own risk, make modifications to its coast earth stations pending final action on its applications.[1]

3. Comsat proposes to provide interim and, ultimately a full range of aeronautical mobile satellite service offerings via the proposed facilities. The full service offerings would be established by year-end 1990 and include: Voice and Data Airline Operational Communications (AOC), Voice and Data Communications for Air Traffic Service (ATS), Automatic Dependent Surveillance (ADC), Aeronautical Passenger Communications (APC) and Airline Administrative Communications (AAC). High speed data (600 or 1200 bits per second) services will be provided to aircraft in international flight and digitally encoded voice services will be provided for both flight operations and passenger communications. On an interim basis, during development and installation of the full service ground earth station (GES) equipment, Comsat proposes to provide, as early as the summer of 1989, a low speed data (300 bits per second) service for flight operations information when VHF service is not available, *i.e.* the aircraft has flown out of range of the transceiver network. Comsat believes that U.S. airline requirements for this type of cockpit data service are immediate. This interim system is to be a predecessor to full service system deployment, not a standalone system.

4. The proposed interim services will use existing INMARSAT space segment. The proposed full service offering will utilize INMARSAT second generation space segment. Both interim and full service offerings require

modification and extension of existing ground facilities to incorporate GES functions. Therefore, Comsat is installing at its own risk pursuant to the waiver granted by the Commission, aeronautical GES equipment for each of its existing coast earth station facilities (CES) in Southbury, Connecticut and Santa Paula, California. The installation of this equipment will enable Comsat to implement the full range of aeronautical services it proposes to provide. Comsat is installing simplified data-only GES equipment to be prepared to communicate with aircraft equipped with low gain, data-only Aircraft Earth Station (AES) avionics in order to provide service across the Pacific Ocean during the summer of 1989 and several months later in the Atlantic Ocean. Comsat states that the GES provides all the relevant features of ARINC Characteristic 741 *(i.e.,* 4.8, 6.0, 10.5 and 21 Kbps), as well as the wide range of terrestrial interface features desired by the aeronautical community.

5. Comsat has estimated the cost of modifying its coast earth stations to be $9,810,000 ($410,000 for interim service and $9,400,000 for full service), of which about $5 million were committed in pre-construction procurement activities for Comsat to provide service on a timely basis. It states it will also incur incremental engineering and administrative costs associated with the coordination of, and technical operational control provisions for, the proposed services, so that it will be in a position to maintain the integrity of the INMARSAT system.

6. Comsat states the international aeronautical satellite market is intensely competitive and subject to aggressive foreign competition targeted at U.S. users. Comsat explains its ratemaking will be developed in this context, with a view towards meeting competitive offerings. It has assumed that rates will be based on a theory of fully allocated costs. However, in anticipation of intense competition and market dynamics, it has also reviewed incremental costing standards in setting prices. Based on conservative demand forecast and assuming low gain data tariff of $1/kilobit, high gain data tariff of $0.65/kilobit, voice tariff of $6/minute, and existing INMARSAT space segment utilization charges, Comsat estimates, based on a fully allocated costing methodology, that the total expected operating expenses (including modification of earth stations) for Comsat from 1989 through 1996 for aeronautical services are $31.9 million, the total estimated revenues over that period are $40.2 million and the net income for that period (after taxes) will be approximately $5.3 million.

7. Comsat states that its maritime customers will also benefit from the efficiencies resulting from shared use of the earth station facilities, because the costs of providing aeronautical services will not be included in the maritime accounts for ratemaking purposes consistent with the Commission's previous instructions regarding Comsat's accounting for aeronautical services. Thus, Comsat believes that aeronautical services will contribute to just and reasonable rates for maritime satellite users. Comsat further states that tariffs governing the service will be subsequently filed and will be subject to Commission review prior to entry into force.

COMMENTS

8. In its petition to deny Comsat's Section 214 application, Arinc contends that Comsat is not qualified under the Maritime Satellite Act to participate in INMARSAT aeronautical services on a monopoly basis as the sole U.S. operating entity in the provision of space segment capacity. Arinc also contends that Comsat has failed to comply with the requirements of Section 63.01 of the Commission's rules.[2] In its petition to deny Comsat's Title III applications, Arinc contends that the applications contain a number of legal, technical and financial omissions. Arinc states that: Comsat is not legally qualified to establish earth station facilities for the purpose of accessing INMARSAT aeronautical space segment in the capacity of "U.S. Signatory to and U.S. operating entity for" INMARSAT; Comsat's descriptions of its GES and CES facilities do not meet the second generation INMARSAT standards and certain frequency coordination and radiation hazard information appears inaccurate; and, finally, Comsat's expectation of using an incremental costing methodology for INMARSAT aeronautical program expenses is unacceptable because of potential cross-subsidization.

9. In its comments, AMSC first requests that any Comsat authorization be conditioned to require that INMARSAT Convention Article 8 notification requirements apply only to international maritime communications and not to aeronautical service. This would, AMSC states, bar INMARSAT from invoking Article 8 against AMSC. Secondly, AMSC calls for any technical coordination between INMARSAT and AMSC to be limited to the coordination requirements of the International Frequency Registration Board (IFRB). AMSC states that this requirement should not only apply to the three MHz currently proposed for overlapping use by both systems, but also to the balance of the L-band that INMARSAT proposes to use in the future. As for the immediate future, AMSC emphasizes that it intends to provide AMSS(R) services in frequencies that overlap with INMARSAT and, therefore, AMSC is entitled to co-primary status on these bands. Finally, AMSC states that INMARSAT should not be permitted to provide aeronautical service in U.S. controlled air space on a permanent basis. AMSC contends that this would be inconsistent with the accepted worldwide practice that communications on an aircraft are provided and controlled by the country within which the aircraft is flying. AMSC believes that to permit INMARSAT to provide U.S. domestic service would be contrary to the Commission's decision in General Docket No. 84-1234 in which it decided that for technical and economic reasons only one system should provide domestic mobile satellite service (MSS). AMSC is concerned that INMARSAT's provision of service in U.S. airspace will result in a substantial loss of spectrum for its domestic MSS system.

10. In other comments, Ford opposes Arinc's petition to deny Comsat's Section 214 application and urges the Commission promptly to allow Comsat and the United States to participate in INMARSAT provision of aeronautical service. Ford states that there is a danger that further delay will undermine the leadership position of U.S. companies in satellite technology, ground segment equipment, including earth stations, master control stations, gateways, and transceivers, and related command and control and computer equipment. Ball and E-Systems also urge

prompt resolution of this matter to allow Comsat to provide aeronautical services via INMARSAT and preserve U.S. industry interests.

11. In opposition to Arinc's petitions to deny and in reply to AMSC, Comsat states that it has the support of the Departments of State and Defense, National Telecommunications and Information Administration (NTIA) and Federal Aviation Administration (FAA) for the prompt grant of its applications. Comsat notes that Arinc's comments do not address the terms under which the Commission should consider provision of aeronautical services -- as an activity ancillary to the provision of maritime services. Comsat contends that it functions as U.S. Signatory and operating entity both for aeronautical and maritime matters. Comsat also contends the provision of aeronautical services via INMARSAT has been designed to produce a competitive market structure, and that any carrier or private system operator can deploy space segment to compete with INMARSAT as well as the intra-INMARSAT foreign carriers that are already aggressively targeting U.S. airlines. Comsat states that AMSC's request that INMARSAT be restricted from serving aircraft on international flights when flying in U.S. air space would cause operational and regulatory difficulties. Comsat also rejects AMSC's claim to co-primary status for the proposed three MHz overlapping aeronautical frequencies.

12. In its reply to Comsat's opposition, Arinc reiterates that its objection was limited to Comsat's request for a monopoly on the provision of INMARSAT aeronautical services in the United States, but that Arinc has always supported Comsat's right and competency to provide INMARSAT aeronautical services on a fully competitive basis. Arinc adds, however, that Comsat is seeking a monopoly under both the Maritime Satellite Act and under the service and geographic market definition adopted by the Commission. Arinc concludes that it is Comsat that has been delaying the initiation of aeronautical services via INMARSAT.

13. In a consolidated reply, AMSC notes its principal concern is that the Commission clearly limit any permanent authorizations for the use of INMARSAT to international communications. AMSC recommends that international communications, in the case of aeronautical services, be defined as communications with aircraft outside of U.S. air space.

DISCUSSION

14. Several of the issues raised by Arinc and AMSC in response to Comsat's applications have been resolved by the Commission in its recent decision in CC Docket No. 87-75.[3] In that proceeding, the Commission determined how INMARSAT aeronautical services should be provided in the United States. The Commission found that the provision of INMARSAT aeronautical services in the United States will be in the public interest and determined that such services are best suited to satisfy communications requirements of aircraft in international flight. In doing so, the Commission emphasized the need for timely and effective U.S. entry into the international aeronautical satellite communications market in response to foreign competition in both service and equipment areas. It found that the public interest would be served by Comsat being the U.S. provider of INMARSAT aeronautical space segment capacity as ancillary to and supportive of its role as the U.S. Signatory and operating entity for the provision of INMARSAT maritime services. Accordingly, we need not consider the legal and policy issues raised by Arinc and AMSC that have been decided by the Commission. We need only determine that Comsat's applications are consistent with the Commission's policy decision and the public interest standard of the Communications Act. For the following reasons, we find that Comsat's applications are consistent with Commission policy and the public interest standard and therefore should be granted, subject to certain conditions.

15. First, the aeronautical communications services that Comsat proposes to provide will be in the public interest. The grant of authority requested by Comsat will permit the early introduction of transoceanic aeronautical services that will improve aviation safety and the efficiency of airline operations by enabling the provision of satellite communications to a presently unserved community of users. The provision of cockpit data services (and later cabin services) on transoceanic flights will improve air traffic services, aeronautical operations communications, other safety related communications and public correspondence services.[4] Comsat's proposed interim operations will provide immediate contributions to aviation safety, and efficiency of airline operations.

16. Second, in CC Docket No. 87-75, the Commission determined that Comsat may be authorized under the Maritime Satellite Act to provide INMARSAT aeronautical services as the U.S. Signatory and operating entity for the provision of aeronautical services that are ancillary to and supportive of its provision of maritime services. Upon review of the applications before us, we find that the Comsat's proposed services will be ancillary to and supportive of its provision of maritime services. Comsat will use the same coast earth stations for aeronautical services that it now uses for maritime services. By spreading its costs over a greater number of services, Comsat facilities should be used more efficiently in a manner beneficial to maritime services customers. Comsat anticipates that the lower resulting costs will, in turn, place added downward pressure on maritime rates. Also, in introducing aeronautical services, Comsat will take measures to safeguard the operational integrity of both new aeronautical services and present maritime services. Comsat will incorporate appropriate technical and operational control provisions from the beginning as an integral part of the system concept. These controls will involve mechanisms to monitor and control a complex network of interconnected facilities, including terrestrial voice and data links as well as satellite communications equipment. Comsat's aeronautical GES facilities will be implemented in a manner that is non-disruptive to the existing maritime communications operations. The frequency assignments have been developed by the INMARSAT Directorate and are adequately offset from those used for the maritime services so as to preclude unacceptable adjacent channel interference. Further, within the maritime and aeronautical services, there is a priority scheme to assure that the safety and distress requirements of each are met promptly. Although the broadband RF facilities are shared between aeronautical and maritime, there is sufficient capacity to accommodate the additional signals since the original amplifiers were generously sized and the average required power per channel is now lower than originally envisioned.

17. Third, the Commission's objective of timely and effective U.S. entry into the aeronautical market will be achieved by grant of Comsat's applications. We believe

that this consideration is particularly important in view of the recent announcements by SITA (Societe Internationale de Telecommunications Aeronautiques, a service cooperative owned by the foreign airlines) that it and three international telecommunications carriers, France Telecom, OTC Limited of Australia, and Teleglobe Canada, will introduce aeronautical satellite communications services via the INMARSAT system to all airlines in 1990.[5] As part of its participation in the consortium, Teleglobe is constructing two earth stations that, together with similar stations in France and Australia, will form a worldwide network.[6] This consortium and another that has been formed by carriers in the United Kingdom, Norway and Singapore will compete with U.S. service providers for the provision of aeronautical services via INMARSAT. Authorization of Comsat to provide both its proposed interim and full service offerings will permit an immediate U.S. competitive response to foreign competition. We will of course consider applications from other U.S. service providers that are consistent with the Commission's decision in CC Docket No. 87-75.

18. Further, as a condition on the grant of Comsat's applications, we will limit Comsat's provision of aeronautical mobile satellite services (both for AMSS(R) and non-AMSS(R) functions) to aircraft in international flight as defined by the Commission in its decision in CC Docket No. 87-75. In that decision, the Commission said that it would authorize the use of INMARSAT aeronautical services via U.S. aeronautical earth stations for aircraft in flight: (1) from the United States to a foreign point; (2) from a foreign point into the United States; and (3) between any two foreign points.[7] The Commission said that aircraft in international flight may also use the domestic mobile satellite system to the extent the coverage area of that system permits. Aircraft in flight between two U.S. domestic points may use only the domestic mobile satellite system for satellite communications to the extent the coverage area of that system permits. Comsat will be required to provide service in accordance with this decision.[8] As a result, we need not address the issues raised by AMSC in this connection.

19. Arinc raises three technical issues concerning Comsat's Title III applications.[9] Arinc claims 1) that Comsat has not requested the appropriate C-band and L-band frequencies, emissions, and powers, and therefore does not comply with Module 3 of INMARSAT's System Definition Manual (SDM); 2) that Comsat erroneously states that no additional interference coordination is required; and 3) that Comsat indicates that a test aircraft earth station (AES) would be part of the ground earth station, but does not include any technical characteristics nor radiation hazard study analysis for this station.

20. Comsat has remedied the first concern by amendment of its Form 403, to include all the required frequencies, powers, emissions and points of communication. Comsat's application now complies with Module 3. As to Arinc's second concern, although the feeder links transmitting frequency band, 6425-6443 MHz, and the receiving frequency band, 3600-3623 MHz, require coordination, no additional frequency coordination is required by Comsat or through industry frequency coordinators. The internal Commission coordination of the feeder links transmitting frequency band with other services has been completed. The receiving band, 3600-3623 MHz, is awaiting clearance from NTIA. We are therefore conditioning Comsat's use of these frequencies on completion of the coordination process with NTIA. In addition, for operations with the first generation of INMARSAT satellites, Comsat will use the test AES on existing L-band frequencies mixed at intermediate frequencies (IF), operated through existing power amplifiers and antennas, and not exceeding the licensed parameters. However, the use of these L-band frequencies are presently allocated for maritime mobile-satellite service and will require an interim waiver of Section 2.106 of the Commission's Rules to allow for the provision of AMSS (R) services. For operations with the second generation of INMARSAT satellites, Comsat's use of the test AES requires frequency coordination with NTIA for the additional L-band frequencies: 1626.5-1638.5 MHz, 1642.5-1649.5 MHz, 1530-1537 MHz, and 1541.5-1548 MHz. We are therefore also conditioning Comsat's use of these frequencies upon completion of that coordination process, and upon the filing and grant of a waiver of Section 2.106.

21. As to Arinc's third concern, the Commission has not adopted standards for AES equipment since it is still under development by the industry. However, in view of the Commission's policy to introduce international aeronautical services via INMARSAT at an early date[10], we will authorize Comsat's use of the AES equipment for the provision of aeronautical services conditioned on Comsat making necessary modification at a later date to comply with standards adopted by the Commission or FAA in the future.

22. Regarding the radiation hazard study analysis for all modifications which Comsat is proposing in its applications, including use of AES equipment, we have reviewed the existing non-ionizing radiation study which was originally filed June 7, 1976, for the Santa Paula (KA-31) and Southbury (WA-28) coast earth station antennas. Although the non-ionizing radiation standard has been lowered from 10 mW/cm^2 to 5 mW/cm^2 since Comsat's original filing, the calculated and measured values at these two earth stations are still sufficient to meet the new standard. Since Comsat has proposed, in these instant applications, no modifications to the two existing antennas nor any increase in total output power, the existing study is still valid, and there are no new environmental considerations.

23. As to Arinc's concern regarding the potential for cross-subsidization between maritime and aeronautical services, the Commission already has taken steps to ensure that Comsat shall properly distribute costs between its aeronautical and maritime services, and its costing methodology will be subject to review when Comsat files its tariffs. In its decision in CC Docket No. 87-75, the Commission required Comsat to continue to isolate the capital and expense costs of the aeronautical portion of its INMARSAT activities and to separate the aeronautical accounts from accounts used to compute rates to maritime users. Also, it required Comsat to file a complete description of the accounting system and cost allocation procedure used to develop its unbundled aeronautical space and earth segment service offerings. This information must be filed concurrently with Comsat's tariffs.

24. Finally, as to AMSC's comments, we find it unnecessary to condition Comsat's authorization to require that INMARSAT Article 8 notification procedures apply only to maritime and not to aeronautical services. Amendments to the INMARSAT Convention and Operating Agreement, which enable the organization to provide

aeronautical services, will take effect in October 1989. As amended, Article 8 of the Convention clearly requires notification only for the provision or use of separate space segment facilities for maritime services.[11] We do, however, endorse AMSC's position that technical coordination between it and INMARSAT be based upon IFRB procedures. In fact, the Commission has pursued this goal for a number of years with INMARSAT. Further, the INMARSAT Council at its 33rd session in July, 1989 agreed "that the criteria to be used by the Council in assessing technical compatibility under Article 8 should be the same as the criteria for assessing the potential for intersystem interference under the ITU Radio Regulations."[12]

25. Accordingly, IT IS ORDERED that (a) the application of the Communications Satellite Corporation, File No. I-T-C-89-076 IS GRANTED pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214 and Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. Sections 752 and 753(c), and Comsat is authorized to provide international aeronautical mobile satellite services via the INMARSAT system and (b) the applications of the Communications Satellite Corporation, File Nos. CSG-89-058-ML and CSG-89-059-ML, ARE GRANTED pursuant to Title III of the Communications Act of 1934, as amended, and Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. Sections 752 and 753(c), and Comsat is authorized to install and operate equipment at both its Southbury, Connecticut (WA-28) and Santa Paula, California (KA-31) coast earth stations in order to provide international aeronautical mobile satellite services via the INMARSAT system subject to the following conditions specified below.[13]

26. IT IS FURTHER ORDERED that Comsat shall file a request with the Commission for an interim waiver of Section 2.106 of the Commission's rules to allow operation of its coast earth stations with INMARSAT first generation satellite space segment for the provision of AMSS(R) services until INMARSAT second generation satellites are launched and placed in operation. Comsat shall not provide AMSS(R) services via the INMARSAT first generation satellite space segment until favorable action has been taken on its request for interim waiver of Section 2.106 of the Commission's rules.

27. IT IS FURTHER ORDERED that Comsat shall provide aeronautical satellite service only to aircraft in international flight as defined in the Commission's decision in CC Docket No. 87-75.

28. IT IS FURTHER ORDERED that Comsat shall account for its earth station investment and operational costs in a manner consistent with the accounting system and cost allocation procedures filed in accordance with the Commission's requirements in CC Docket No. 87-75.

29. IT IS FURTHER ORDERED that Comsat shall file unbundled rates for space segment and earth station services.

30. IT IS FURTHER ORDERED that Comsat shall develop with AMSC appropriate arrangements for handoff of traffic between the INMARSAT system and AMSC's domestic system in accordance with the Commission's decision in CC Docket No. 87-75. Comsat shall report to the Commission within 180 days of the release of this order on the progress of its discussions with AMSC regarding this matter, and, thereafter continue such reports at 180 day intervals until otherwise directed by the Common Carrier Bureau.

31. IT IS FURTHER ORDERED that Comsat's authorization to use aeronautical earth station (AES) equipment is limited to frequency translation error correction, testing, and network coordination purposes and is subject to future modification to assure compliance with any future Commission or FAA standards concerning these units.

32. IT IS FURTHER ORDERED that Comsat's operation of its coast earth stations with INMARSAT second generation satellites on C-band feeder link frequencies 3600-3623 MHz and the additional L-band frequencies for the AES, 1626.5-1638.5 MHz, 1642.5-1649.5 MHz, 1530-1537 MHz, and 1541.5-1548 MHz, are subject to final coordination of these bands with NTIA. Comsat shall not use these frequencies to operate with INMARSAT second generation satellites until such coordinations with NTIA have been successfully completed.

33. IT IS FURTHER ORDERED that Arinc's Petition to Deny Monopoly Status IS DENIED.

34. IT IS FURTHER ORDERED that, before completion of equipment installation and facility activation, Comsat shall provide the Commission with a summary of equipment which was actually installed.

35. The Commission retains jurisdiction over this matter to ensure nondiscriminatory use of, and equitable access to, the INMARSAT satellite system.

36. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Communications Satellite Corporation, 4 FCC Rcd 2488 (1989).

[2] Arinc explains that Comsat failed to respond to all of the general categories (and subcategories) of information specified in Section 63.01. Arinc states that Comsat, for example, cross-references the technical showing in its Title III application, although, Arinc notes, the Title III application does not contain the referenced information. Arinc adds that the Section 214 application does not provide a map or sketch of the proposed project as required by Section 63.01(j), does not respond to Section 63.01(k) and fails to include the proposed tariff charges and regulations as required by Section 63.01(o).

[3] Provision of Aeronautical Services via the INMARSAT System, CC Docket No. 87-75, 4 FCC Rcd 6072-6093, (released August 4, 1989).

[4] The services will improve greatly the information available to both the pilot and air traffic controllers, and thereby improve aviation safety. Meteorological and similar information will be

provided to the aircraft that will allow the avoidance of potentially dangerous weather conditions. Likewise, the pilot will be able to provide information to ground operations without delay that will allow as much time as possible to prepare for emergency landings or other on-board emergencies or more quickly determine an aircraft's location in the event of a potential disaster. In addition to the beneficial effects on airline safety, the services will better airline operational and administrative communications and thereby increase airline operating efficiency.

[5] SITA Press Release, dated May 30, 1989.

[6] Teleglobe Press Release, dated May 30, 1989.

[7] Provision of Aeronautical Services via the INMARSAT System, at p.6078-6079. The Commission recognized that, as to the first two categories, certain international flights may have more than one point of entry into the United States or more than one point of departure from the United States. It determined that aircraft enroute between two U.S. domestic points as part of an international flight may use only the domestic mobile satellite system for satellite communications to the extent the coverage area of that system permits.

[8] Additionally, in accordance with the Commission's decision, Comsat is required to consult with AMSC to establish appropriate arrangements for handing off traffic between INMARSAT and AMSC's domestic system for both AMSS(R) and non-AMSS(R) communications. The Commission has left development of the specifics of these arrangements to the licensees and their prospective customers. The Commission expects its licensees to closely coordinate with the FAA to ensure that the AMSS(R) hand-off arrangements are consistent with applicable FAA policy and regulations. It also expects that the hand-off procedures between the various systems will be developed by various aeronautical standard setting organizations and that Commission licensees will comply with these standards.

[9] As to Arinc's claims that Comsat's Section 214 application fails to respond to all of the generic categories of information specified in Section 63.01 of the rules, we find that the information provided in both Comsat's Section 214 and Title III applications is substantially complete and sufficient for purposes of acting on the applications. Comsat has provided proposed charges in its Title III application, as well as the cost of modifying its earth stations. Comsat's space segment costs are subject to INMARSAT tariffs. Its accounting methodology will be provided to the Commission pursuant to Docket No. 87-75.

[10] Provision of Aeronautical Services via the INMARSAT System, at p. 6078.

[11] Amended Article 8 provides, in part:

> "A Party shall notify the Organization in the event that it or any person within its jurisdiction intends to make provision for, or initiate the use of, individually or jointly, separate space segment facilities to meet any or all of the maritime purposes of the INMARSAT space segment, to ensure technical compatibility and to avoid significant economic harm to the INMARSAT system."

[12] Council/33/SR/FINAL (Annex XIII). The INMARSAT Assembly of Parties will decide whether to ratify this language at its Seventh Session scheduled for November, 1989.

[13] Amendments to the INMARSAT Convention and Operating Agreement permitting INMARSAT to provide aeronautical services will not formally enter into force until October 13, 1989. However, we are authorizing Comsat to begin service before that date if necessary to meet customer requirements. We believe that such action is in the public interest and permissable under the INMARSAT agreements since the amendments have been ratified by the requisite number of INMARSAT members.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALASCOM, INC. File No. C4-89-003-P/L

Waiver of Part 2 of the
the Commission's Rules to
Permit an International
Fixed Public RadioCommunications Link between Gambell,
Alaska, and Provideniya,
Magadan, U.S.S.R.

MEMORANDUM OPINION AND ORDER

Adopted: August 31, 1989; Released: October 5, 1989

By the Chief Engineer:

1. Alascom, Inc. (Alascom), requests a waiver of Section 2.106 of the Commission's Rules to establish an international fixed public radiocommunication (IFPR) link between Gambell, Alaska, and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz frequency band. This frequency band is allocated domestically to the land mobile service.

2. According to Alascom, the 450-460 MHz band was chosen because the availability of equipment necessary to efficiently provide this service is limited and also because this frequency band is within the range of frequencies that have been negotiated with Soviet officials. Alascom advises that this will be the first direct point-to-point, terrestrial telecommunications service between the U.S. and the U.S.S.R. in the Arctic region. Alascom states that the proposed IFPR link will extend about 60 miles across the Bering Strait between the United States and the Soviet Union. Alascom points out that this area, slightly south of the Arctic Circle, is one of the most isolated and desolate on earth and the probability of the proposed link causing interference to other stations is extremely remote.

3. Alascom states that there is ample precedent for granting the requested waiver. On October 9, 1974, the Commission granted a similar authorization to RCA Alaska Communications, Inc., a predecessor of Alascom. That license authorized the provision of temporary fixed service throughout the state of Alaska on several frequencies, including some in the 450-460 MHz range. Therefore, Alascom contends that the Commission has waived its Rules, when there is sufficient cause, in order to foster common carrier service in remote locations.

4. The U.S. State Department, on April 3, 1989, approved the telephone interconnection between the two countries contingent upon satisfaction of any Coordination Committee on Export Control (COCOM) requirements; completed coordination with the Department of Commerce; and, compliance with appropriate FCC rules. On July 27, 1989, the Common Carrier Bureau issued a Special Temporary Authority to construct the proposed link.

5. We note that the proposed IFPR link will improve radiocommunications between the U.S. and the U.S.S.R. We agree with Alascom that it is extremely unlikely that any other users of the spectrum will be affected by granting the waiver due to the orientation of the link over water and due to the desolate environment. We note that no objections to Alascom's application were filed. We also are cognizant of the special circumstances in coordinating frequencies and suitable equipment with the U.S.S.R. We agree that precedent exists for such a waiver. In light of these factors, we conclude that the waiver is in the public interest and we are granting the waiver as requested.

6. Accordingly, IT IS ORDERED, that the Table of Frequency Allocations, Section 2.106 of the Commission's Rules, IS WAIVED, to permit Alascom, Inc. to establish an IFPR link between Gambell, Alaska, U.S.A. and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz band. This action is taken pursuant to the authority of 47 U.S.C., Sections 154(i), 302 and 303, and pursuant to authority delegated to the Chief Engineer in Section 0.241 of the Commission's Rules, 47 C.F.R. Section 0.241.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

Access Billing Requirements
for Joint Service Provision

MEMORANDUM OPINION AND ORDER

Adopted: September 26, 1989; Released: October 5, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The Commission and the Common Carrier Bureau have considered meet point billing questions, which arise in cases in which access services are provided by two or more exchange carriers, on various occasions since 1983. The first access tariff filings contained two optional provisions covering the billing of access services provided by more than one carrier. The first option, single company billing, was rejected by the Commission in 1984 because it effectively allowed a carrier providing service to charge rates based on the tariff of a carrier not providing the service.[1] The other option, meet point billing, was the subject of a report filed in December 1986 by the Meet Point Billing Task Force of the Exchange Carrier Standards Association, Inc. (ECSA). The report (ECSA Report), adopted by ECSA's Ordering and Billing Forum (OBF), contained proposals for implementing meet point billing.

2. On July 31, 1987,[2] the Commission directed the OBF to study the feasibility of extending meet point billing principles to Feature Group A (FGA) and Feature Group B (FGB). The OBF filed a report on December 8, 1988,[3] and we responded by requesting comments and establishing a pleading cycle.[4] Furthermore, in an October 4, 1988, Order,[5] the Commission requested that the OBF submit a similar report regarding the possibilities of meet point billing for special access services.[6] The OBF subsequently filed a report on March 23, 1989,[7] and the Bureau again established a pleading cycle.[8] In this Order we consider the OBF report recommendations regarding meet point billing for FGA and FGB, and for special access, as well as the comments filed in response to those reports.

II. BACKGROUND AND PLEADINGS

A. *OBF Recommendations Regarding FGA and FGB*

3. In response to the Commission's *July 31 Order*, the OBF established the FGA and FGB Work Group in March 1988, to undertake the task of identifying, analyzing, and resolving issues regarding the meet point billing of FGA and FGB. After several meetings attended by a wide variety of industry representatives, the FGA and FGB Work Group presented its recommendations to the full OBF in August 1988. These recommendations were adopted in October 1988, and filed with the Commission in December 1988. *December 8 Report* at 1. In its report, the OBF recommends that the Commission not require meet point billing of FGA because technical and administrative complexities would make such a requirement burdensome. *Id.* at 1-2. The OBF further recommends, however, that FGB access services be meet point billed and recommended that the Commission establish guidelines similar to those that were established for FGD. *Id.*

1. *Feature Group A*

4. The *December 8 Report* explains that FGA and FGB access services were originally designed to provide exchange facilities for interstate access service to Other Common Carriers (OCCs) before the divestiture of the Bell System. *Id.* at 3. Both of these services have since attained the potential to serve customers in most geographic areas of the Nation. The Report says local exchange carriers (LECs) are now able to provide FGA carriers with unrestricted access to and from any end office in a Local Access and Transport Area (LATA). This allows interexchange carriers (ICs) to collect originating traffic efficiently, as well as efficiently distribute terminating traffic. *Id.* at 4.

5. The OBF provides four reasons for recommending that FGA meet point billing not be implemented: (1) the collection and exchange of usage information is still problematic for both LECs and ICs; (2) the nature of LATA-wide termination is such that it would cause voluminous billing percentages;[9] (3) the transition to equal access is too burdensome and complex to allow the meet point billing of FGA; and (4) the proliferation of bills that would result from FGA meet point billing would be burdensome to customers. *Id.* at 4-8.

6. According to the *December 8 Report*, the collection and distribution of usage information is difficult for both originating and terminating FGA traffic. First, LECs are limited in their ability to accumulate originating FGA usage because of the technical characteristics of FGA service configuration. The Dial Tone Office (DTO), where the FGA line is served, records originating FGA minutes of use (MOU) using a technology similar to that used for the line-side accumulation of terminating 800 Service usage. *Id.* at 5. While this form of recording allows LECs accurately to record the number of MOUs that an FGA provider is collecting from a LATA, it does not provide information at the point of origin within the LATA from which the traffic originated. Consequently, LECs do not have information about how FGA traffic is originated by end office or by LEC. *Id.* Second, LECs encounter similar problems with terminating FGA. Because of recording deficiencies and, sometimes, the absence of usage recordings, LECs often find it necessary to use assumed MOUs. When they do, these minutes are prorated over all the end offices in the LATA where the FGA call is terminated. If FGA were to be meet point billed, this proration would be complicated by the combination of end offices having specific usage measurements and others using assumed MOUs. *Id.* at 6. Hence, it would be impossible to obtain accurate measurement of FGA usage.

7. The OBF asserts that any attempt to meet point bill FGA would also be complicated by the number of billing percentages that would be required. *Id.* at 7. The *Decem-*

ber 8 Report explains that every end office in a LATA has the potential for being a DTO. This fact, coupled with the ability for LATA-wide termination available with FGA access service, means that billing percentages could be necessary from every end office in a LATA. Such a necessity would significantly increase billing difficulty and make verification of bills virtually impossible. *Id.* Since one of the goals of meet point billing is to simplify bill verification, the report notes, the possibility of increased billing percentages would make the meet point billing of FGA access service administratively burdensome.

8. The Report says the transition to equal access also complicates FGA meet point billing. *Id.* The OBF provides a list of nine factors that it believes require additional consideration before FGA can be meet point billed. These factors are: (1) assigning a LEC that will be responsible for administering the plan and disseminating information to all other LECs; (2) determining the availability of usage and access line data; (3) allocating the necessary resources required to analyze and perform the transition functions in a timely manner to assure the most current and accurate customer billing; (4) developing the percentage to apply to the number of recorded FGA MOU based on the number of access lines converted and not converted to equal access; (5) accumulating the actual originating MOU by DTO against which to apply the percentage; (6) offsetting the number of calculated premium MOU for FGA by the number of FGD minutes recorded in the local calling area of the DTO; (7) applying the percentage of ownership (billing percentage) to the MOU for the calculation of original local transport; (8) accumulating the terminating MOU by mileage band for all terminating recordings at the DTO; and (9) applying the billing percentage to the MOU for the calculation of terminating local transport. *Id.* According to the OBF, these factors would complicate bill verification and the calculation of FGA usage such that it would be burdensome to LECs.

9. Finally, the OBF asserts that requiring the meet point billing of FGA services could potentially result in every billing LEC in the LATA rendering a small bill to end users for interLATA Foreign Exchange FGA lines. *Id.* at 8. End users, the OBF continues, would receive several bills for the same service, therefore creating confusion and customer dissatisfaction. The OBF accordingly recommends that the Commission not require meet point billing for FGA access service. Instead, the OBF recommends that LECs which are jointly providing service enter into revenue-sharing agreements, with the DTO LEC billing ICs for both originating and terminating FGA usage. *Id.* at 28.

2. *Feature Group B*

10. The *December 8 Report* explains that FGB is similar to FGD in that both are trunk-side services that may be provided through a tandem. *Id.* at 4. Until recently, however, LECs did not have recording capability for FGB. Many LECs have subsequently installed the necessary recording equipment and software to measure actual FGB usage. *Id.* Therefore, the OBF claims, usage information collection and billing are not the problem for FGB that they are with FGA.

11. As a result, the OBF recommends that the Commission require meet point billing for FGB access services on much the same basis as it does for FGD. This would include billing FGB under one of the options prescribed under the MECAB guidelines. *Id.* at 26. Furthermore, the OBF outlines the following nine requirements for the implementation of FGB meet point billing: (1) the definition and negotiation of additional billing percentages; (2) the determination of recording and measurement capabilities in order to facilitate the exchange of usage information; (3) the need to agree on a MECAB billing option; (4) the identification of the initial billing company; (5) the provision of both Billing Account Reference and Billing Account Cross Reference; (6) the selection of a method of payment; (7) the implementation of any required system and software changes; (8) the development of administrative procedures; and (9) the prompt notification to customers of a LEC's selected MECAB billing option. *Id.* at 26-27.

3. *Pleadings on FGA and FGB Recommendations*

12. In response to the Public Notice issued by the Bureau,[10] 14 parties filed comments on February 13, 1989,[11] while 15 parties filed replies on February 28, 1989.[12] Six commenters support the *December 8 Report* in its entirety;[13] the remaining commenters give their qualified support to the *December 8 Report*. No commenter wholly opposes the report.

13. The majority of the commenters agree with the OBF recommendation that the Commission refrain from requiring meet point billing of FGA access services. Only Contel makes the additional recommendation that if it is possible for a LEC to implement meet point billing for FGA, the Commission should permit that LEC to do so. Contel Comments at 2.[14] While all commenters agree that FGA access services should not be meet point billed, the OBF's related recommendation regarding the adoption of revenue-sharing agreements caused the most concern and debate among the parties.

14. TUECA, however, is the only commenter that totally opposes revenue-sharing agreements. TUECA Comments at 1-2. TUECA contends that these agreements are unworkable because such agreements must be accepted by all LECs within the relevant LATA and would involve the pooling of information. *Id.* at 2. All of the other commenters support the idea of revenue-sharing agreements, but express various concerns and ideas regarding their creation and implementation. MCI, for example, urges the Commission to set guidelines for these agreements and also recommends that these agreements be filed with the Commission. MCI Comments at 3-4. Various other commenters suggest guidelines that the Commission should adopt and apply to revenue-sharing agreements. *See* NECA Comments at 5-6; NTCA Comments at 7; OPASTCO Comments at 3-4. Finally, SWB suggests that those LECs which have revenue-sharing agreements already in place should be allowed to keep them. SWB Comments at 2-4.

15. Only two commenters, MCI and US Sprint, question the OBF recommendation relating to FGB. MCI Comments at 8-9; US Sprint Comments at 1-6. Both ICs assert, first, that FGB meet point billing will not work because LECs will be as uncooperative in billing for FGB as they are in billing for FGC and FGD. MCI Comments at 8-9; US Sprint Comments at 2 n.1. Second, both carriers believe that meet point billing of originating FGB traffic is not possible because LECs do not have access to Automatic Number Identification, therefore rendering LECs unable to track FGB usage at the end office level. MCI Comments at 6; US Sprint Comments at 5. US

Sprint concedes, however, that meet point billing of FGB is possible, but only if the single billing option is adopted. US Sprint Comments at 5-6. Finally, US Sprint asserts that LECs should be required to send all ICs, before implementation of FGB meet point billing, copies of the bills which the LECs intend to use so that ICs may review them. *Id.* at 7.

16. The replies essentially mirror the comments in that all parties agree with the OBF recommendation that FGA should not be meet point billed. Several replies echo Contel's suggestion that those LECs which have successfully implemented meet point billing for FGA access services should be allowed to continue those arrangements. Fort Mill Reply at 2; Lancaster Reply at 2; Rock Hill Reply at 2. As with the comments, furthermore, the replies are most concerned with the recommendation that LECs enter into revenue-sharing agreements. Several parties argue that the Commission should not set guidelines for such agreements; in addition, NTCA opposes MCI's suggestion that the revenue-sharing agreements be filed with the Commission. Ameritech Reply at 6; NECA Reply at 3; BellSouth Reply at 2; NTCA Reply at 4.[15] The area of most debate, however, concerns the rates on which these agreements should be based. On the one hand, some parties argue that any revenue-sharing agreements should be based on the secondary exchange carrier's tariff. Fort Mill Reply at 2; Lancaster Reply at 2; Rock Hill Reply at 2. Other parties, however, believe that the agreements should be based on the primary exchange carrier's tariff rates. GTE Reply at 3-4; ICTC Reply at 1-2; NYNEX Reply at 3-4; SWB Reply at 3. To base the agreements on the secondary exchange carrier's tariff, argues ICTC for example, would be administratively burdensome. ICTC Reply at 1-2.

17. Finally, most parties take issue with MCI and US Sprint's assertions regarding the viability of FGB meet point billing. GTE argues that gathering usage information for originating FGB traffic should not be a problem, while NYNEX claims that it has already successfully implemented meet point billing for FGB. GTE Reply at 5-6; NYNEX Reply at 5-9. BellSouth and NECA argue that MCI and US Sprint have failed to justify the belief that FGB cannot be meet point billed. BellSouth Reply at 5-6; NECA Reply at 4. In regard to US Sprint's request that LECs be required to send ICs advance copies of their proposed FGB bills, NECA and NTCA assert that US Sprint fails to provide justification for such an unprecedented requirement. NECA Reply at 4-5; NTCA Reply at 4.

B. *OBF Recommendation Regarding Special Access*

18. The OBF filed its *March 23 Report* regarding special access at the request of the Commission in the *October Order*. *See October Order* at para. 91. In its report, the OBF determined that meet point billing for special access services differs significantly from meet point billing for switched access services because exchange and usage information needed for billing switched access is not required to meet point bill special access. *March 23 Report* at 3. Any complexities in meet point billing special access services, the OBF explains, are related to the type of service and the number of LECs involved. *Id.* at 8-9. Furthermore, billing problems are generally attributable to inconsistent service definitions and frequent service order activity. *Id.* at 9. The OBF therefore recommends that the Commission make no further ruling on meet point billing of special access services at this time. Instead, the OBF believes the Commission should allow the industry to resolve any open issues by working with the OBF. *Id.* at 10.

19. Comments on the *March 23 Report* were filed on April 14, 1989,[16] and replies on April 28, 1989.[17] All commenters, except US Sprint, support the *March 23 Report* recommendations implicitly. US Sprint, however, expresses its desire to have the Commission impose a single billing option on LECs for special access. US Sprint Comments at 1-2. US Sprint asserts that with respect to FGC and FGD meet point billing, LECs have been uncooperative in employing the multiple billing option by failing to provide the necessary information required for proper bill verification. *Id.* at 3-4.

20. All of the replies were in response to US Sprint's comments and its call for the single billing option. GTE argues that US Sprint has not supported its assertion that LECs have not supplied the necessary information to facilitate bill verification. GTE Reply at 3; *see also* SWB Reply at 3. NYNEX avers that elimination of the multiple billing option would be unjustified because that option has been implemented successfully in NYNEX's region, and the incurrence of costs relating to converting to the single billing option would be inefficient. NYNEX Reply at 3-4. Finally, US West suggests that US Sprint use the complaint process under Section 208 of the Communications Act, 47 U.S.C. § 208, to address its concerns that LECs are not providing the proper information needed for bill verification. US West Reply at 4.

III. DISCUSSION

21. We agree with the OBF that the complexities involved in FGA meet point billing would be burdensome to LECs and would not achieve the goals that the Commission set for meet point billing. One goal, for example, is the simplification of bill verification for LEC customers. *See July 31 Order*, 2 FCC Rcd at 4521. This goal would not be attainable through meet point billing of FGA because of the problems associated with the collection of usage information pertinent to FGA service. In addition, the potential need for voluminous billing percentages would also burden the bill verification process. Finally, we note that both LECs and ICs unanimously endorse the OBF's recommendation regarding FGA. We have carefully considered this recommendation, as well as the comments supporting it, and we have decided not to require LECs to meet point bill FGA access services.[18]

22. The OBF also recommended that the Commission require LECs that are jointly providing service to enter into revenue-sharing agreements in which the DTO LEC bills the IC for both originating and terminating FGA traffic. In a December 1985 Order,[19] the Commission determined that secondary exchange carriers could recover interstate access revenue either through interstate access tariffs or equitable revenue-sharing agreements with primary exchange carriers.[20] Hence, there are currently revenue-sharing agreements already in place for many LECs.

23. The Bureau agrees with the OBF recommendation that LECs which are jointly providing FGA service should enter into revenue-sharing agreements. We do not believe, however, that it would be appropriate either to disturb those revenue-sharing agreements already in existence or to establish guidelines for new agreements to be

negotiated as a result of this Order. BellSouth is correct in noting that the Commission has declined past requests to establish guidelines for these agreements,[21] and we believe it is best to continue that practice. The Bureau does, however, urge LECs to negotiate in good faith and to establish access rates that are designed to recover both the primary and secondary exchange carriers' costs.[22]

24. We expect that the settlement revenue from these revenue-sharing agreements will be reflected in the calculation of interstate access rates and charges. Furthermore, we require that all LECs jointly providing FGA service have a revenue-sharing agreement negotiated and signed not later than one year after the release date of this Order and that such agreement be implemented within six months of the date of signature.[23] An officer of the primary exchange carrier will be responsible for certifying to the Commission that a revenue-sharing agreement has been signed. If such an agreement has not been negotiated by the established deadline, the primary exchange carrier must provide substantial justification in a waiver request explaining what efforts have been made to secure an agreement, when those efforts were made, and why they were unsuccessful. This explanation must also be certified by an officer of the primary exchange carrier.

25. We also agree with the recommendation that the Commission require FGB access services to be meet point billed. We accordingly will require LECs to make all adjustments necessary to implement FGB meet point billing by the OBF recommended date of July 1, 1990. As with meet point billing for FGC and FGD, we require LECs to file tariff revisions implementing meet point billing in their respective 1990 annual access tariff filings. LECs that fail to do so, or to file the appropriate waiver requests indicating why they cannot implement meet point billing, will be subject to rejection of their annual access tariff filing or a forfeiture proceeding under Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, or both, for failure to comply with a Commission Order. In addition, the Bureau expects the OBF to maintain and revise all meet point billing standards described in the *December 8 Report*, since that industry group has demonstrated its expertise in establishing those standards and since it endeavors, as demonstrated in its development of the *December 8 Report*, to include any members of the telecommunications industry who desire to participate in its deliberations.[24]

26. Finally, the Bureau believes that the OBF is correct in recommending that establishing meet point billing standards for special access services would be premature. We conclude that the increase in billing complexity caused by the addition of each service type and the number of LECs involved, coupled with inconsistent service definitions and frequent service order activity, are sufficient reasons for refraining from establishing meet point billing standards for special access service. We agree with the OBF that the ECSA should be given more time to analyze and resolve those issues that make the meet point billing of special access potentially burdensome. The Bureau therefore requests that the OBF provide us with a progress report regarding the feasibility of special access meet point billing not later than December 31, 1990.

IV. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 205(a) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 205(a), that all local exchange carriers jointly providing Feature Group A access service shall enter into binding revenue-sharing agreements not later than one year after the release date of this Order. These agreements must be designed to compensate all participating carriers for all relevant interstate access costs.

28. IT IS FURTHER ORDERED that local exchange carriers providing joint access service for Feature Group B shall file tariff revisions consistent with this Order as part of their annual access tariff filing required by Part 69 of the Commission's Rules, 47 C.F.R. Part 69, for access tariffs scheduled to become effective July 1, 1990.

29. IT IS FURTHER ORDERED that the Ordering and Billing Forum of the Exchange Carriers Standards Association, Inc., shall file a report not later than December 31, 1990, advising the Commission regarding the feasibility of establishing guidelines for special access meet point billing.

30. IT IS FURTHER ORDERED that CC Docket No. 87-579 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 FCC 2d 1082, 1176-77 (1984).

[2] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, Memorandum Opinion and Order, CC Docket No. 86-104, 2 FCC Rcd 4518 (1987) (*July 31 Order*).

[3] Report of the Ordering and Billing Forum, Carrier Liaison Committee, Exchange Carriers Standards Association, Inc., on Feature Group A and B Meet Point Billing, filed Dec. 8, 1988 (*December 8 Report*).

[4] *See* Ordering and Billing Forum of the Exchange Carriers Standards Association, Inc., Files Report on Meet Point Billing, Public Notice, DA 89-30, released Jan. 13, 1989.

[5] Access Billing Requirements for Joint Service Provision, CC Docket No. 87-579, Phase II, DA 88-1544, released Oct. 4, 1988 (*October Order*).

[6] *Id.* at para. 91.

[7] Report of the Ordering and Billing Forum, Carrier Liaison Committee, Exchange Carriers Standards Association, Inc., on Special Access Meet Point Billing, filed Mar. 23, 1989 (*March 23 Report*).

[8] *See* Ordering and Billing Forum of the Exchange Carriers Standards Association Files Second Report on Meet Point Billing, Public Notice, DA 89-357, released Mar. 31, 1989.

[9] Billing percentages are listed by service type for each pair of locations between which access services are provided on a meet point billing basis. The sum of the billing percentages filed for each pair of end point locations must equal 100 percent. For each pair of locations, the LECs involved must agree in writing to their respective billing percentages. Under the OBF's Mul-

tiple Exchange Carrier Access Billing (MECAB) guidelines. LECs are then required to submit this information to The National Exchange Carrier Association (NECA) so that it may be included in NECA's Tariff F.C.C. No. 4. These MECAB guidelines were adopted by the Commission in CC Docket No. 86-104. *July 31 Order* at 4519. *See* MECAB Guidelines, Section 4.02.

[10] *See* footnote 4, *supra*.

[11] The following parties filed comments: Ameritech Operating Companies (Ameritech), Bell Atlantic Telephone Companies (Bell Atlantic), Contel Corporation (Contel), GTE Telephone Companies (GTE), MCI Telecommunications Corporation (MCI), NECA, National Telephone Cooperative Association (NTCA), Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), Pacific Bell and Nevada Bell (Pacific Companies), Southwestern Bell Telephone Company (SWB), Telephone Utilities Exchange Carrier Association (TUECA), US Sprint Communications Company Limited Partnership (US Sprint), and US West Communications (US West).

[12] The following parties filed replies: Ameritech, Bell Atlantic, BellSouth Telephone Companies (BellSouth), Fort Mill Telephone Company (Fort Mill), GTE, Illinois Consolidated Telephone Company (ICTC), Lancaster Telephone Company (Lancaster), NECA, NTCA, NYNEX Telephone Companies (NYNEX), Rock Hill Telephone Company (Rock Hill), SWB, United States Telephone Association (USTA), US Sprint, and US West.

[13] *See* Ameritech Comments at 1; Bell Atlantic Comments at 1; GTE Comments at 1; Pacific Companies Comments at 1; and US West Comments at 1.

[14] Contel also urges the Commission to allow any LEC that implements FGA meet point billing the flexibility to choose the MECAB billing option most convenient to that LEC. *Id.*

[15] BellSouth cites the Commission's decision in Amendment of Part 69 of the Commission's Rules To Ensure Application of Access Charges to All Interstate Toll Traffic, Memorandum Opinion and Order, 2 FCC Rcd 2154, 2156 (1987), for the proposition that the Commission has resisted such entreaties in the past.

[16] Comments were filed by Ameritech, BellSouth, Contel, GTE, NTCA, Pacific Companies, and US Sprint.

[17] Replies were filed by GTE, NECA, NYNEX, SWB, USTA, and US West.

[18] Several commenters have requested that the Commission allow FGA meet point billing to continue whenever a LEC has successfully implemented FGA meet point billing. We see no reason at this time not to honor that request.

[19] Amendment of Part 69 of the Commission's Rules To Ensure Application of Access Charges to All Interstate Toll Traffic, Memorandum Opinion and Order and Request for Supplemental Comments, 102 FCC 2d 1243 (1985) (*December Order*).

[20] The primary exchange carrier is the LEC in whose exchange the IC obtains its point of presence. With FGA, this would be a LEC's DTO. A secondary exchange carrier is any LEC in whose exchange a FGA or FGB connection is not made, but from whose exchange an IC customer may call that IC's point of presence. *See December Order*, 102 FCC 2d at 1245.

[21] *See* note 15, *supra*.

[22] We remind all LECs that in attempting to recover their costs through revenue-sharing agreements, they should take depooling into consideration. *See* MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, Report and Order, 2 FCC Rcd 2953 (1987).

[23] With respect to FGA, by requiring LECs to enter into revenue-sharing agreements we are also making current primary exchange carrier/secondary exchange carrier (PEC/SEC) arrangements, which do not involve revenue-sharing agreements, obsolete. This is because these PEC/SEC arrangements were created in lieu of revenue sharing agreements or meet point billing. *See* Primary and Secondary Exchange Carrier Billing and Revenue-Sharing Arrangements in Access Tariffs, Designation Order, CC Docket No. 87-582, 2 FCC Rcd 7544 (Com.Car.Bur. 1987). Therefore, the Bureau will allow these PEC/SEC arrangements to continue between LECs until those LECs negotiate and sign a revenue-sharing agreement in accordance with the requirements of this Order. As to FGB, for the reasons discussed in paragraph 25, *infra*, all PEC/SEC arrangements are obsolete. *Id.*

[24] The Commission will have the opportunity to review any revisions to these standards to the extent that further tariff revisions are necessary.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 4, 1989

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for responding to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. Typically, these responses to individuals are not published in the FCC Record (*See* 0.445(a) of the rules).

These decisions are available for public inspection. Periodically, the Managing Director releases a Public Notice listing the decisions he has made on these matters. The decisions are placed in General Docket 86-285. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director decisions are released for information:

Robert J. Wilson & Patricia Phipps - Petition for Reconsideration of Managing Director's Decision of January 23, 1989 Dismissed and Ordered Payment of $6000 Hearing Fee - FM Station at Custer, SD (June 22, 1989)

Kono Associates - Petition for Reconsideration Dismissed as Moot - Dismissal of Cellular Application Due to Alledged Lost Check (July 25, 1989)

SMR Cellular, Inc. - Petition for Reconsideration Dismissed as Moot - Dismissal of (3) Cellular Applications Due to "Post Dated" Checks (July 25,1989)

G & D Communications, Inc. - Request for Refund of $6000 Hearing Fee Denied - TV Permit for Channel 9 at Flagstaff, Arizona (MM Docket No. 88-470) (July 28, 1989)

Comstar Second Cellular Limited Partnership - Request for Inclusion in Lottery for Cellular Market No. 374 Granted (July 28, 1989)

Amidor Communications, Inc. - Request for Reinstatement of Application Granted - Rural Cellular Lottery Application Dismissed as Untimely in Market No. 686 (July 28, 1989)

Super K Electronic Products, Inc. - Request for Refund of Filing Fees Denied - (2) Equipment Certifications (July 28, 1989)

Jeffrey Busch - Request for Refund of $1800 Filing Fee Granted - Untimely Filing for Modified Facilities for a New FM Station at Bridgeport, NY (July 28, 1989)

H. James Sharp - Application for Review of Managing Director's Decision of January 4, 1989, Denying Refund of $2250 Filing Fee Commission Dismissed Application (July 13, 1989)

Wesley Godfrey - Application for Review of Managing Director's Decision of November 30, 1987, Commission Denied Application (July 13, 1989)

North Communications of Puerto Rico, Inc. - Request for Refund of $ 1400 Filing Fee Denied - Existing Rural Radio Facilities (August 8, 1989)

Michael P. Stephens - Petition for Refund of $6000 Hearing Fee Granted - New FM Station on Channel 233A at Locust Grove, OK (August 8, 1989)

Family Stations, Inc. - Petition for Refund of $500 Filing Fee Granted - Assignment of License for Station KEBR-AM at Rocklin, CA (August 8, 1989)

Caribbean Broadcasting Corporation - Petition for Reconsideration Granted - Application Dismissed Due to Alleged Bank Error for Low Power TV on Channel 18 at Schaumberg, IL (August 8, 1989)

Kenyon Communications - Petition for Reconsideration Granted - Additional Billing for Minor Modification of KCIW-AM and KCIW-FM at Wickenburg, AZ (August 8, 1989)

Family Life Ministries Radio, Inc. - Request for Refund of $6000 Hearing Fee Granted - New Non-Commercial Educational FM Station at Spencer, NY (August 8, 1989)

Romulus Engineering - Request for Reinstatement Dismissed as Moot - 59 Rural Cellular Applications in Markets 405, 516, and 652-672 (August 14, 1989)

Charles Mauszycki - Request for Refund of $1600 Filing Fee Granted - Application for Modification of MMDS License at Mitchell, SD (August 11, 1989)

Kevin Johnson - Request for Refund of $1600 Filing Fee Granted - Application for Modification of MMDS License at Mitchell, SD (August 14, 1989)

Centel Cellular Company - Petition for Reconsideration Held in Abeyance and Included in Lottery on a Contingent Basis - Dismissal of (2) Rural Cellular Lottery Applications as Untimely Filed in Market #'s 567 and 579 (August 11, 1989)

Silver Springs Broadcasting, Inc. - Request for Refund of $6000 Hearing Fee Granted - New FM Station at Silver Springs, FL (August 11, 1989)

United Cellular Enterprises - Application for Review of Managing Director's Decision of March 28, 1989, Held in Abeyance and Included in Lottery on a Contingent Basis (August 14, 1989)

Quantum Partnership - Application for Review of Managing Director's Decision of March 27, 1989, Held in Abeyance and Included in Lottery on a Contingent Basis (August 14, 1989)

United Cellular Enterprises - Petition for Reconsideration Held in Abeyance and Included in Lottery on a Contingent Basis - Dismissal of (4) Rural Cellular Applications due to Alleged Fee Error (August 14, 1989)

Boles-American Indian - Request for Refund of $6000 Hearing Fee Denied - New FM Station on Channel 297C2 at Post, TX (August 14, 1989)

Christian FM Application Partnership - Request for Refund of $6000 Hearing Fee Denied - New FM Station at Marion, KY (August 15, 1989)

Wirth/Mester Cellular - Petition for Reconsideration Granted - Rural Cellular Application Returned due to "NSF" Check (August 23, 1989)

Terry Cohen - Petition for Refund of $1800 Filing Fee or Reinstatement Granted - New FM on Channel 244 at Williams, AZ (August 23, 1989)

Marantha Broadcasting Company, Inc. - Petition for Refund of $75 Filing Fee Denied - Application for WFMZ-TV at Allentown, PA (August 23, 1989)

Susan Hineline - Petition for Reconsideration Granted - Dismissal of Rural Cellular Lottery Application due to "NSF" Check (August 23, 1989)

Atlantic Coast Cellular Partnership - Request for Reconsideration Denied - Dismissal of Rural Cellular Lottery Application due to "NSF" Check (August 23, 1989)

Western CellTel L.P. - Petition for Reconsideration Denied - Dismissal of Rural Cellular Lottery Application due to "Defective Payment" (August 23, 1989)

Pacific Nationwide Cellular - Petition for Reconsideration Denied - Dismissal of 91 Rural Cellular Applications due to "NSF" Checks (August 23, 1989)

Cypress Cellular Associates - Petition for Reconsideration Granted - Dismissal of Rural Cellular Application due to "NSF" Check (August 28, 1989)

The Chronicle Publishing Company - Petition for Reconsideration Denied - Nationwide Paging Application (August 28, 1989)

Cell Max Communication Systems - Petition for Reconsideration Granted - Dismissal of Rural Cellular Application due to Check Still Outstanding (August 28, 1989)

Dominion Broadcasting Company - Request for Refund of Filing Fee Denied - New FM Station at Christianburg, VA (August 28, 1989)

IDB Communications Group, Inc. - Request for a Fee Determination, Waiver of the Commission's Rules and a Partial Refund Denied - Application for Transfer of Control Involving American Satellite Co. d/b/a Contel ASC & CICI, Inc. d/b/a Contel ASC, International Division (August 28, 1989)

Brian O'Neil - Petition for Reconsideration Granted - Dismissal of Rural Cellular Lottery Application due to "NSF" Check (August 28, 1989)

Sonoma Cellular Limited Partnership - Petition for Reconsideration Granted - Dismissal of Rural Cellular Lottery Application due to "NSF" Check (August 28, 1989)

Pocahontas Broadcasting Company - Petition for Reconsideration of Managing Director's Decision of May 17, 1989, Denied - New FM Station on Channel 275A at Welch, WV (MM Docket No. 88-517) (August 28, 1989)

Radio Property Ventures - Petition for Reconsideration of Managing Director's Decision of May 15, 1989, Denied - Station KQXI-AM at Arvada, CA (MM Docket No. 88-560) (August 28, 1989)

Twiggs County Broadcasting, Inc. - Petition for Reconsideration of Managing Director's Decision of May 22, 1989, Denied - New FM Station at Jeffersonville, GA (August 28, 1989)

Tri-State Broadcasters, Inc. - Petition for Reconsideration Denied - Additional Billing for Change in Facilities for KVDB-FM at Sioux Center, IA (August 30, 1989)

Bible Broadcasting Network, Inc. - Petition for Refund of $500 Filing Fee Granted - Application for WTNZ-FM at Clinton, TN (August 30, 1989)

Swiftcell Associates - Petition for Reconsideration Granted - Dismissal of Rural Cellular Lottery Application due to "NSF" Check (August 31, 1989)

Eugene T. McMahon - Request for Refund of $500 Filing Fee Denied - Assignment of License Application for WELE(AM) at Ormond Beach, FL (September 7, 1989)

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER THOMAS M. HOLLERAN, DEPUTY, AMD-O, PH. 632-5316

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BURROUGHS WELLCOME CO. File No. CSG-88-038-ML

Application for Authority to Modify its License for a Fixed Transmit/Receive Earth Station at Research Triangle Park, North Carolina to Permit Communications with the INTELSAT System

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: September 29, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. The Commission has under consideration the captioned application filed by Burroughs Wellcome Company (Burroughs) to modify its license for a transmit/receive earth station at Research Triangle Park, North Carolina (Call Sign E880790) to permit the provision of private, non-common carrier services via the INTELSAT system. The application was placed on the Commission's public notice and no comments were received.

APPLICATION

2. Burroughs is a wholly-owned subsidiary of the Wellcome Foundation Limited, a United Kingdom corporation. Burroughs and its parent are engaged in the research, development, and marketing of products for the promotion of human and animal health. In the instant application, Burroughs seeks authority to modify its license for its domestic Ku-band transmit/receive earth station at Research Triangle, North Carolina to communicate with the INTELSAT system.[1] The proposed earth station will conform to INTELSAT's E2 specifications, and will transmit and receive up to a maximum of two 1.544 Mbps, QPSK modulated signals. Burroughs states that it will use the proposed earth station to conduct private, intracorporate video teleconferencing among its offices located in the United States and the United Kingdom. Burroughs states further that the use of internal corporate teleconferencing will permit it to increase its efficiency in the production of goods, the allocation of resources and the management of personnel.

DISCUSSION

3. The subject application involves the Commission's authority to license transmit/receive earth stations operating with the INTELSAT system to private, non-common carrier entities. This issue was previously decided by the Commission in acting on a request for a declaratory ruling filed by Reuters. In its request, Reuters sought a determination that the Commission had the authority to license private, non-common carrier earth stations for operation with the INTELSAT system under Title III of the Communications Act, notwithstanding Section 201(c)(7) of the Communications Satellite Act.[2] In a *Declaratory Ruling* released March 15, 1988, the Commission ruled that it did have statutory authority to license transmit/receive earth stations operating with the INTELSAT system to private, non-common entities.[3] The Commission also held that the private international earth station proposed by Reuters was not a "satellite terminal station" within the meaning of either Section 103(2) or 201(c)(7) of the Communications Satellite Act. On May 23, 1989, the Commission's *Declaratory Ruling* was upheld by the United States Court of Appeals for the District of Columbia Circuit.[4]

4. In light of the Commission's *Declaratory Ruling*, as affirmed by the court, we may authorize the modification of Burroughs' domestic earth station license to permit the operation of this station as an international earth station pursuant to the public interest standard of Title III of the Communications Act, provided that the station is operated on a non-common carrier basis for private use by the licensee and will not be operationally connected with the terrestrial communications system within the meaning of Sections 103(2) and 201(c)(7) of the Communications Satellite Act. We find that the applicant has demonstrated that the earth station at issue here satisfies these requirements and that a grant of the application is in the public interest.

5. In its application Burroughs states that the proposed earth station will be used to provide private, non-common carrier services between its offices located in the U.S. and the United Kingdom. Burroughs has also stated that the proposed earth station will be operated on a "stand alone" basis for purposes of providing internal video teleconferencing.[5] Thus, the proposed earth station will not be operationally connected with a terrestrial communications system. We therefore find that the Burroughs' application is consistent with the requirements of the *Declaratory Ruling*, as affirmed by the Court.

6. We further find that Burroughs is otherwise qualified to hold a Commission license under the circumstances presented. Although the applicant has more than one-fifth foreign ownership and is controlled by a corporation of which more than one-fourth of the directors are aliens, alien ownership and control of Burroughs does not prohibit the Commission from licensing it to operate the subject earth station on a private, non-common carrier basis. Section 310(b) of the Communications Act, as amended in 1974 by Public Law 93-505, 88 Stat. 1576, only prohibits foreign corporations from holding broadcasting, common carrier, aeronautical enroute, or aeronautical fixed radio licenses. Section 310(b) is applicable only to those licenses specifically enumerated by the language of the provision, and thus is not applicable to private use licensees.[6] Burroughs already has been licensed to construct and operate the subject earth station to provide private, domestic communications service.[7]

The international character of the earth station proposed to be operated by Burroughs does not change this analysis.

7. In view of the foregoing, we find that the public convenience and necessity will be served by approving the above-captioned application for modification of Burroughs' domestic earth station license to permit communications with the INTELSAT system.

8. Accordingly, IT IS ORDERED that the application of Burroughs Wellcome Co., File No. CSG-88-038-ML, IS GRANTED and the license for Burroughs' transmit/receive earth station at Research Triangle Park, North Carolina (Call Sign E880790) is hereby modified to permit communications with the INTELSAT system.[8]

9. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] On May 27, 1988 Burroughs was authorized to construct and operate the subject earth station to provide its private, domestic communications service. *See* File No. 1568-DSE-P/L-88.

[2] Section 201(c)(7) provides that the Commission shall:

> "(7) grant appropriate authorization or the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers or to the corporation and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either."

[3] In the Matter of Licensing Under Title III of the Communications Act of 1934, as amended, of Private Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System (*Declaratory Ruling*), 3 FCC Rcd 1585 (1988).

[4] TRT Telecommunications Corporation v. Federal Communications Commission, Case Nos. 88-1357, 88-1358, decided May 23, 1989.

[5] *See* Letter dated August 14, 1989 from Paul A. Holcombe, General Counsel for Burroughs Wellcome Co. to George S. Li, Chief, International Facilities Division, Common Carrier Bureau.

[6] *See* Cable Television Citizenship Requirements, 59 FCC 2d 723.

[7] *See* footnote 1, *supra*.

[8] This authorization is not to be construed as permitting the provision of any service via INTELSAT space segment between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PROFESSIONAL COMMUNICATIONS, INC. — File No. I-T-D-89-007

Application for authority to discontinue service at public coast station WXY 934 at Ashtabula, Ohio.

ORDER AND AUTHORIZATION

Adopted: September 29, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on May 11, 1989 by Professional Communications, Inc. (PCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to discontinue service from its branch public coast office WXY 934 in Ashtabula, Ohio. The application was placed on public notice on August 9, 1989. No comments were received.

2. The basic statutory test to be applied by this Commission in considering applications for discontinuance of common carrier service to a community is found in Section 214(a) of the Act. Under this Section, the Commission may permit discontinuance of service upon a finding that "neither the present nor future public convenience and necessity will be adversely affected" by the proposed action. Application of this standard presents the Commission with a task of balancing the financial burden that would be imposed on the carrier by continued operation of its facilities with the needs and interests of the user community.[1]

3. In support of its application, PCI states that identical service to the Ashtabula, Ohio community is available from its station KLU 745 in Erie, Pennsylvania. Further, the U.S. Coast Guard serves the Ashtabula, Ohio community, and no messages have been received at the instant station, WXY 934, in the past 12 months.

4. Upon consideration of the application IT IS HEREBY CERTIFIED that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance of service via the instant station.

5. Accordingly, IT IS ORDERED that application File No. I-T-D-89-007 IS GRANTED, and PCI is authorized to discontinue service via its branch coast station WXY 934 at Ashtabula, Ohio.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] Public Coast Radiotelegraph Stations, 67 FCC 2d 790 at 795 (1978).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

INTELCO INTERNATIONAL, INCORPORATED — File No. I-T-C-88-213

Application for authority to acquire and operate facilities for service to Venezuela.

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 29, 1989; Released: October 5, 1989

By the Chief, International Facilities Division:

1. The above-captioned application filed on September 20, 1988, by Intelco International Incorporated (INTELCO), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire, and operate cable and connecting facilities for direct service between the U.S. and Venezuela and beyond.[1] The application was placed on public notice on September 30, 1988. Western Union Corporation (Western Union) filed a Petiton to Deny INTELCO's application on October 28, 1988. INTELCO filed its response to Western Union's Petition to Deny on November 29, 1988.[2] On December 9, 1988, Western Union filed a Motion to Strike and reply to INTELCO's response.

APPLICATION

2. INTELCO, a Delaware corporation, is a non-dominant international carrier who provides international switched voice, telex and telegram services on a resale basis. (*Intelco International Inc.* 2 FCC Rcd 6111 (1989)). INTELCO proposes to acquire two voice grade circuits from the American Telephone and Telegraph Company (AT&T) to provide telex, telegram and such other services as it may be authorized in the future, to Venezuela. The applicant maintains the proposed services will further the public interest by providing telecommunications services to the South American area where there is a present and future need for such services. INTELCO believes there is a significant potential for continued growth in the South American area and that its entry into the South American market will encourage innovation and competition, which will in turn bring to the consumers the benefits of competitive pricing and increased availability of services.

PLEADINGS

3. In its Petition to Deny, Western Union first states that INTELCO's application does not conform to Part 63 of the Commission's Rules, since it fails to supply the necessary information for the Commission to make a determination; and that therefore, INTELCO's application should be denied. However, the central thrust of Western Union's Petition is that some of the facilities and agreements INTELCO will use in providing the proposed telecommunications service have been obtained through the bribery of foreign officials and other illegal acts.[3] Western Union notes that it has filed a civil action before the United States District Court for the District of New Jersey regarding these allegations; and that also, a grand jury convened in that court is investigating criminal charges related to the same acts. Western Union asks that the Commission deny INTELCO's application for the reasons it sets forth or defer action on the application pending the outcome of related proceedings. In its Motion to Strike and Reply, Western Union notes that INTELCO's Response has neither been signed nor verified by the party as required by Section 1.52 of the Commission's Rules, 47 C.F.R. 1.52, and that as a result INTELCO's response should be stricken. Western Union also notes in its reply that it is not implying that fitness of character is a requirement *per se* for authority under Section 214 of the Communications Act but rather that since some of the facilities and franchises which INTELCO proposes to use to provide the international telecommunication services it requests, were obtained through bribery of foreign officals and other illegal acts, it is the Commission's obligation to protect the public interest and to implement the Communications Act in a manner consistent with other federal laws.

DISCUSSION

4. We will first address Western Union's procedural objection raised in its Motion to Strike and Reply. It appears, as Western Union has noted, that INTELCO's response is not signed nor verified by the party, who in this instance is not represented by an attorney. Therefore, since the pleading does not conform to Section 1.52 of the Commission's Rules it will be striken and not considered in this proceeding. Next, Western Union contends that INTELCO's application fails to furnish the necessary information for the Commission to make a determination as required by Section 63 of the Commission's Rules. We disagree. The application as filed is complete and acceptable for filing and provides sufficient information for the Commission to decide this matter.

5. As to Western Union's allegations concerning bribery of foreign officials and other illegal acts on the part of the applicant, they are simply that, mere allegations. These same allegations are presently the subject of both a civil suit and a grand jury investigation which have not been resolved. The Commission precedent in this area is clear. It is long standing Commission policy not to take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity and antitrust or anticompetition misconduct unless it is adjudicated.[4] We do not find at this time that Western Union has raised a substantial and material question of fact that would warrant Commission action in this matter. For the same reason set forth above, we will also dismiss Western Union's informal complaint (File No. I-T-C-88-213-C).

6. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Venezuela by INTELCO.

7. Accordingly, IT IS ORDERED that Application File No. I-T-C-88-213 IS GRANTED, and INTELCO is authorized to:

a. acquire, on an Indefeasible Right of User (IRU) basis, from AT&T a one-half interest in and operate two voice-grade circuits in the Second Florida - St. Thomas Cable and the St. Thomas - Venezuela Cable;

b. lease and operate connecting facilities between INTELCO's operating offices and the cable terminal at Vero Beach, Florida; and

c. use said facilities to provide INTELCO's regularly authorized services between the U.S. and Venezuela and beyond.

8. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between INTELCO and its correspondent in Venezuela, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

9. No substantial changes inconsistent with this or any other relevant Commission order shall be made before final execution of an IRU agreement between INTELCO and AT&T and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

10. IT IS FURTHER ORDERED that Western Union Corporation's Motion to Strike and Reply IS GRANTED to the extent noted, and otherwise Denied.

11. IT IS FURTHER ORDERED that Western Union's informal complaint (File No. I-T-C-88-213-C) is hereby Dismissed.

12. IT IS FURTHER ORDERED that INTELCO shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1988).

13. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

14. IT IS FURTHER ORDERED that the applicant shall file the semi-annual reports required by Section 63.10 of the Commission's Rules and Regulations, 47 C.F.R. §63.10 (October 1, 1988).

15. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order *(see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] On November 29, 1988, INTELCO's attorneys withdrew their appearence in this matter.

[2] On November 9, 1988, the Chief, International Facilities Division granted an extension of time for INTELCO to file its response to November 29, 1988.

[3] Western Union on October 29, 1988, filed an informal complaint (File No. I-T-C-88-213-C) based upon the same allegations and requested that the Commission rescind the Order, Authorization and Certificate granted to INTELCO on September 30, 1987.

[4] Policy Regarding Character Qualification 102 FCC 2d 1179, 1183 (1986), *recon. denied* 1 FCC Rcd 421 (1986), appeal dismissed *sub nom. National Association of Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (Character Qualification Policy Statement) and IT&E Overseas Inc. *Memorandum Opinion and Order*, 4 FCC Rcd 3774 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-427

In the Matter of

Amendment of Section 73.202(b), RM-6914
Table of Allotments,
FM Broadcast Stations.
(Canton, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 6, 1989

By the Chief, Allocations Branch:

1. Bick Broadcasting Company (petitioner), has filed a petition for rule making seeking the substitution of FM Channel 272C3 for Channel 272A at Canton, Missouri. Petitioner also requests modification of its license for Station KQCA(FM), Channel 272A, to specify operation on Channel 272C3.

2. A staff engineering analysis has determined that Channel 272C3 can be allotted to Canton consistent with the minimum distance spacing requirements specified in Section 73.207 of the Commission's Rules provided there is a site restriction 3.7 kilometers southwest of the community.[1] The site restriction will prevent a conflict with Station WRMJ, Channel 272A, Aledo, Illinois. We shall also propose to modify the license of Station KQCA(FM), Channel 272A, to specify operation on Channel 272C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In view of the fact that the proposal could provide a wide coverage area service to Canton, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

	Channel No.	
City	Present	Proposed
Canton, Missouri	272A	272C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 27, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James E. Janes, President
Bick Broadcasting Company
119 North Third St., Box 711
Hannibal, Missouri 63401

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will

be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 272C3 are 40-06-13 and 91-33-04.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-428

In the Matter of

Amendment of Section 73.202(b), RM-6872
Table of Allotments,
FM Broadcast Stations.
(Winona, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1989; Released: October 6, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KAGE, Inc. (petitioner), requesting the substitution of FM Channel 237C3 for Channel 237A. Petitioner also requests modification of its license for Station KAGE-FM, Channel 237A, to specify Channel 237C3.

2. We believe petitioner's proposal warrants consideration. Channel 237C3 can be allotted to Winona, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site, 4.7 kilometers (2.9 miles) west of the community.[1] We shall also propose to modify the license of Station KAGE-FM, Channel 237A, to specify operation on Channel 237C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for the Winona, Minnesota, area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Winona, Minnesota	237A, 268A	237C3, 268A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 27, 1989,** and reply comments on or before **December 12, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David E. Hilliard
Edward A. Yorkgitis, Jr.
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 237C3 at Winona are 44-03-00 and 91-42-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal No. 1668

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: September 11, 1989 Released: September 12, 1989

By the Chief, Common Carrier Bureau:

1. On June 30, 1989, AT&T Communications (AT&T) filed Transmittal No. 1668, to offer discounted AT&T PRO WATS facilities to affiliated entities via AT&T's Commercial Affiliation Program (ACAP). MCI Telecommunications Corporation (MCI) filed a petition to reject Transmittal 1668 on July 17, 1989,[1] to which AT&T replied on July 27, 1989.[2] These revisions are scheduled to become effective on September 13, 1989.

2. Under ACAP, members of trade associations and commercial organizations may qualify for an exemption from the monthly recurring charges and the non-recurring service order charge for AT&T PRO WATS. As described in Transmittal 1668, ACAP is designed to allow AT&T to retain and win communications service business which AT&T would otherwise lose as a result of customers' participation in similar affiliated interest programs offered by MCI and other competitors.[3] Therefore, AT&T invokes the doctrine of competitive necessity to justify Transmittal 1668.

3. MCI asserts that AT&T's proposed revisions should be rejected because the doctrine of competitive necessity does not extend to switched voice offerings, such as AT&T's PRO WATS Service.[4] MCI maintains that for the purpose of satisfying Sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a), the *Private Line Guidelines Order* provides that carriers may only invoke the doctrine of competitive necessity if private line service or special access offerings are involved.[5] Therefore, MCI claims, AT&T's PRO WATS switched voice service offering cannot be justified based on the competitive necessity doctrine.

4. In reply, AT&T submits that the competitive necessity doctrine "plainly applies to switched services as well as non-switched services."[6] AT&T asserts that the Commission confirmed that discounts for switched services designed to meet competitors' prices would be permitted, provided that the discounted offering satisfies the net revenue test.[7] AT&T argues that the Commission implicitly recognized that the competitive necessity doctrine may be used to justify a switched service offering when the Commission failed to designate the issue in the Order designating issues for investigation in the *Holiday Rate Plan* investigation.[8] AT&T further contends that in addition to satisfying the competitive necessity test, ACAP conforms with the ratemaking standards contained in the Commission's Price Cap Rules.[9]

5. The Common Carrier Bureau has reviewed Transmittal 1668, the description and justification supporting it, and the various pleadings. We conclude that no compelling argument has been presented that the proposed tariff revisions filed by AT&T are patently unlawful so as to require rejection and that an investigation is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition to reject AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 1668, filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] MCI Petition To Reject, Tr. No. 1668, filed July 17, 1989 (MCI Petition).

[2] AT&T Reply, filed July 27, 1989 (AT&T Reply).

[3] AT&T Tr. No. 1668, Attachment at 1.

[4] MCI Petition at 3 (citing Private Line Rate Structure and Volume Discount Practices, 97 FCC 2d 923, 947-48 (1984) (*Private Line Guidelines Order*)).

[5] *Id.*

[6] AT&T Reply at 1.

[7] *Id.* at 2.

[8] *Id.* at 2 n.*** (citing AT&T Communications, Competitive Pricing Plans, Holiday Rate Plan, CC Docket No. 88-471, Memorandum Opinion and Order, FCC 88-299, 65 RR 2d 433 (1988) *(Holiday Rate Plan)*).

[9] *Id.* at 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 89-116,
89-117 and 89-118

In the Matter of

FCC Procedure for Measurement of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating below 30 MHz)

FCC Procedure For Measuring RF Emissions from Intentional Radiators with Periodic Operation and Associated Superregenerative Receivers

FCC Procedure for Measurement of Unintentional Radiators (Except Digital Devices and Devices Operating below 30 MHz)

ORDER EXTENDING TIME TO FILE COMMENTS

Adopted: September 22, 1989 Released: September 25, 1989

By the Chief Engineer:

1. Notices of Proposed Rule Making in the above entitled proceedings, FCC 89-154, FCC 89-155 and FCC 89-156, respectively, were adopted by by the Commission on May 12, 1989, and released on June 29, 1989. Comments and reply comments in these proceedings originally due on August 21, 1989, and September 25, 1989, respectively, were extended by Commission Order to September 25, 1989 and October 30, 1989, respectively.

2. On September 18, 1989 American Telephone and Telegraph Company (AT&T) filed with the Commission a petition requesting a further extension of the time for filing comments in these proceedings from September 25, 1989 to October 9, 1989 and the time for filing reply comments from October 30, 1989 to December 11, 1989. The petitioner states that although the test procedures proposed in these proceedings are somewhat similar to TP-5, which was the subject of an earlier proceeding, there are differences not only between TP-5 and the proposed test procedures but also between the proposed test procedures themselves. They express the opinion that more time is needed to sort out these differences and to prepare responses to the expected voluminous reply comments.

3. The Commission recognizes the complexity and interrelated nature of these proceedings, and values the contributions of the petitioner and others in the development of the subject test procedures. Because of our desire to have a fully developed record before us, it has been determined that an extension of the comment and reply comment dates in each of these proceedings is warranted. However, due to our desire to resolve these proceedings as soon as possible and because a previous extension has already been granted, we feel that extending the reply comment period as requested will unnecessarily prolong these proceedings. We believe that the concerns of all interested parties can still be resolved by extending the reply comment period to November 13, 1989 instead of the requested December 11, 1989.

4. Accordingly, IT IS ORDERED, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5) that the period of time for the filing of comments in the above proceedings is extended until October 9, 1989, and the time for the filing of reply comments is extended until November 13, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BAY SPRINGS TELEPHONE COMPANY, INC. Revisions to Tariff F.C.C. No. 2 — Transmittal No. 40

ORDER

Adopted: September 25, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

1. On July 14, 1989, Bay Springs Telephone Company, Inc. (Bay Springs), filed the above-captioned tariff revisions which establish a non-recurring rate element applicable to Interim NXX Translation, an optional service feature provided by Bay Springs. A petition to suspend and investigate the tariff transmittal was filed by MCI Telecommunications Corporation (MCI) on July 31, 1989 (MCI Petition). Bay Springs filed an opposition to MCI's petition on August 4, 1989 (Bay Springs Opposition). The tariff revisions are scheduled to become effective on October 1, 1989.

2. MCI states that Bay Springs presently provides originating 800 NXX Service to MCI from its end offices via the South Central Bell Telephone Company LATA tandem. MCI Petition at 1. MCI asserts that as a result of Bay Springs' proposal MCI is uncertain as to the charges that Bay Springs would assess MCI for 800 NXX Service. *Id.* at 2. MCI objects to any plan by Bay Springs to charge MCI for Interim NXX Translation. *Id.* According to MCI, Bay Springs does not demonstrate that MCI would not be charged twice for such access if it orders 800 NXX Translation service from another exchange carrier that also has a charge for the screening of Interim 800 NXX Service. *Id.*

3. Bay Springs replies that it will apply its charge for Interim NXX Translation only when Bay Springs performs the final 6-digit screening at its end offices to deliver originating 800 and 900 Service calls to the proper interexchange carrier's point of termination, based on the NXX code of the dialed 800 or 900 Service number. Bay Springs Opposition at 2. Bay Springs states that in cases in which it begins to perform this final translation function at its end offices, the traffic will then be delivered to the customer's point of termination without any further translation. According to Bay Springs, the translation function that is currently performed by South Central Bell at its access tandem will thus no longer be necessary. *Id.* at 2-3. Bay Springs asserts that it will not assess its charge for this optional feature for orders received by South Central Bell to add or change NXX translation codes prior to the date on which Bay Springs commences to perform the final translation function. However, Bay Springs will apply the proposed non-recurring charge for each order received to add or change NXX translation codes after Bay Springs begins to perform the final 6-digit screening function. Bay Springs states that South Central Bell should then cease assessing its translation charge. *Id.* at 3.[1]

4. The Common Carrier Bureau has reviewed the tariff transmittal and the pleadings. We conclude that the proposed revisions present no questions that warrant suspension or investigation of the proposed tariff revisions at this time.

5. Accordingly, IT IS ORDERED that the petition to suspend and investigate the captioned transmittal filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] BellSouth has confirmed that South Central Bell will not assess a translation charge for traffic being translated in the Bay Springs end office.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Transmittal No. 1741
COMMUNICATIONS
Revisions to Tariff F.C.C. No. 12

Custom-Designed Integrated Services

ORDER

Adopted: September 26, 1989 Released: September 28, 1989

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) Transmittal No. 1741, scheduled to become effective September 29, 1989, makes various rate modifications to its Virtual Telecommunications Network Service (VTNS) Option IV. These revisions are characterized by AT&T as a response to price reductions over the past year that affect all interexchange services. According to the Description and Justification, "existing Option IV measured rate levels are now less attractive than when agreed to last year and, unless modified, will not attract usage beyond that needed to satisfy the tariff's minimum obligations." Petitions to reject or suspend the proposed revisions were filed by Williams Telecommunications Group (Williams) and by Sprint Communications Company Limited Partnership (Sprint). MCI Telecommunications Corporation (MCI) petitioned to investigate the filing.

2. The revisions would increase the basic charge for this VTNS option, while decreasing measured charges under rate schedules A and B; alter calling capabilities to include customer-specified non-port locations, and add the associated rate schedule C. The transmittal also changes the authorization code charge to a flat rate per call, and reduces change rates for 1.5 Mbps channels.

3. Williams asserts that Option IV is not a general offering but one targeted to a specific customer currently leasing all its switched service from AT&T. Williams Petition at 4-5. The use of access rates from particular local exchange carrier territories to develop VTNS Option IV rates, Williams adds, constitutes a geographic restriction comparable to those condemned in the Commission's *April 18 Order*.[1] Williams states that significant disparities are evident in various VTNS options between rates for specific rate elements, showing AT&T's failure to comply with the private line rate structure guidelines of Section 61.40 of the Commission's Rules, 47 C.F.R. § 61.40. Williams adds that the potential for discrimination against other VTNS customers requires that a likeness determination be made on the basis of the entire service package. *Id.* at 9-10. As to AT&T's recital of competitive factors as warranting these revisions, Williams states that no evidence has been addressed to the Commission's competitive necessity standards. *Id.* at 12-13. Williams urges the Commission to require more detailed supporting data, and the individual contracts upon which VTNS options are based. *Id.* at 14. The wide variation in the ratio of projected revenues to costs for several VTNS options, Williams argues, indicates that AT&T derives rates on a case-by-case basis to justify the rate level negotiated with the customer. *Id.* at 15-16 and Appendix B.

4. MCI contends that AT&T's transmittal requires full justification both of the cost savings warranting the rate reductions, and the related assertion that the customer otherwise will reduce its usage substantially. MCI Petition at 5 n.11. MCI argues that the rate concessions run counter to the supposed inflexibility of AT&T's "lock-in" strategy. *Id.* at 4. MCI states that AT&T retains an incentive to cross-subsidize, in order to affect the rate-of-return reports to be provided under price cap regulation. Finally, MCI asserts that AT&T should not be permitted to abandon its contractual right to receive higher rates for providing service to VTNS customer(s). *Id.* at 6-7.

5. Sprint states that, despite increased VTNS usage, AT&T estimates that costs have decreased by some 8.6 percent between Transmittal 1592 and 1741, and asserts that annualizing such a cost reduction would entail an annual decrease of some 30 percent. Sprint requests the documentation of AT&T costing models, and asks that any cost reductions be reflected in VTNS options that are "like" services with this option. Sprint Petition at 3-5. Sprint also contends that in past VTNS filings AT&T has defended its omission of separate financial data for private line and switched service categories by invoking the Commission's supposed holding that AT&T need not furnish data below the "total interstate" level of aggregation initially provided in Tariff 12 filings. Sprint argues that Orders cited by AT&T to support this argument are inapposite, because those Orders arose from disputes over the disaggregation of costs beyond the category level. *Id.* at 5 n.10.

6. AT&T replies that its proposed revisions are not restricted to a single customer, and there are no indications that customers are being denied service on the basis of these specifications. AT&T Reply at 3-4. AT&T asserts that the divergence between measured charges applied under different VTNS options, complained of by Williams, reflects differences in cost savings, and states that Option IV does not violate the private line guidelines, because integrated service packages are not private line offerings. *Id.* at 5. AT&T further states that Sprint's contention respecting disaggregated financial data ignores the discontinuation of the Interim Cost Allocation Manual under price cap regulation, and argues that its positive net revenue showing rebuts MCI's unsupported concerns over cross-subsidy. *Id.* at 6-7. As to Williams' assertions respecting competitive necessity criteria, AT&T replies that it demonstrated instead that the rates were fully justified on a cost basis. *Id.* at 7-8. AT&T concludes that Williams has raised no new reasons for the Commission to require the filing of VTNS contracts. *Id.* at 8.

7. The Common Carrier Bureau has reviewed AT&T's Transmittal 1741, the petitioners' assertions, and related pleadings. We conclude that no compelling argument has been presented that the proposed tariffs are so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

8. Accordingly, IT IS ORDERED that the petitions to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal 1741, filed by Williams Telecommunications Group,

Sprint Communications Company Limited Partnership, and MCI Telecommunications Corporation, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] AT&T Communications, Revisions to Tariff F.C.C. No. 12, CC Docket No. 87-568, Memorandum Opinion and Order, 4 FCC Rcd 4932 (1989), *recon. pending*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Commission Requirements for Cost Support Material To Be Filed with January 1, 1990, Access Tariff Revisions

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

1. On September 1, 1989, the Common Carrier Bureau released an Order detailing the requirements for the local exchange carriers' (LEC) November 2, 1989, flow-through filing of updates to the LECs' access tariff rates effective January 1, 1990, in order to reflect certain changes affecting the January - June 1990 period.[1] The *TUF Order*, in effecting the simplified rate correction methodology we are permitting LECs to use, established requirements for simplified cost support material. Specific data submissions were detailed in the Tariff Update Format (TUF) appended to that Order. We also established a calendar for these filings, including a requirement that requests for waivers of the data requirements in the TUF or of all other rules or orders affecting the November 2 filing be submitted no later than September 11, 1989. In this Order we consider those waiver requests and further clarify filing requirements.[2]

I. BACKGROUND

2. Under the Access Rules, Part 69 of the Commission's rules, 47 CFR Part 69, most LECs are required to update their access tariffs each year to retarget rates to the authorized rate of return and to implement changes in Commission rules and schedules, based upon projections of costs and demand in the upcoming year. For several years, the annual revisions were filed to become effective on January 1. In 1988, however, the Commission shifted the annual filing to an April 1 effective date, consolidated other scheduled tariff revisions, and adopted July 1 as the effective date for annual filings beginning in 1990.[3] As a result, tariffs filed to become effective on April 1, 1989, are to remain in effect until replaced on July 1, 1990. Because many LECs indicated that it would be difficult for them to develop reliable forecasts extending from their January 1989 filing date into the first half of 1990, the Bureau allowed the LECs to base their April 1, 1989, rates on an April-through-December 1989 test year. We also stated that we would require the LECs to make a simplified flow-through filing effective January 1, 1990, to reflect important separations changes.[4] The *TUF Order* describes that flow-through filing.

3. In response to the *TUF Order*, Alltel Service Corporation (Alltel), Ameritech Operating Companies (Ameritech), Contel Corporation (Contel), the National Exchange Carrier Association, Inc. (NECA), the NYNEX Telephone Companies (NYNEX), Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (SWB), the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Company (together, US West), and the United Telephone System (United) filed waiver requests.[5] American Telephone and Telegraph Company (AT&T) and MCI Communications Corporation (MCI) filed oppositions.

II. PLEADINGS

A. *Waiver Petitions*

4. Alltel requests a waiver of the *TUF Order* to reflect a change in the multi-line business end user rates.[6] Ameritech requests a waiver of the *TUF Order* and of Section 61.38 to reflect additional exogenous costs due to changes in Illinois tax law.[7] Contel requests permission to leave Contel of Eastern Missouri out of its cost and demand data, as that company is newly acquired from United, and the needed data are not available.[8] Further, Contel requests a waiver of the September 1, 1989, baseline date, established in the *TUF Order*, so that Contel may show data incorporating its aggregation of switched and special access rates from 20 study areas into four sets of consolidated rates, effective September 25, 1989. NECA also requests a waiver of the September 1, 1989 baseline date to allow NECA to incorporate its new traffic sensitive (TS) switched access rate effective September 13, 1989. NYNEX requests a waiver of the trend formula methodology established in the *TUF Order*.[9] NYNEX also requests for New York Telephone (NYT) a waiver of the requirement that it apply inside wire (ISW) changes to all rate elements; NYT seeks to apply its inside wire changes only to CCL rate elements, in order to avoid rate churn and unnecessary shifts in rate relationships.

5. SNET requests a waiver of the *TUF Order* to permit SNET to reflect recently enacted Connecticut tax legislation.[10] SWB requests a waiver of the September 1 baseline date to allow SWB to reflect in its filing certain changes presently pending in tariff transmittals scheduled to become effective after September 1 but before the November 2 filing date.[11] SWB also requests that we clarify that the *TUF Order* permits LECs' filings to use September 1, 1989, rates as adjusted by transmittals with later effective dates, or that we grant SWB a waiver to use such adjusted rates in its November 2 filing.

6. US West requests a waiver of the *TUF Order* to permit consideration of an additional cost factor, unregulated customer premises equipment (CPE) integration.[12] US West also requests a waiver to permit its November 2 filing to allow for step three in US West's four-step transition of the local transport rate element into distance-sensitive and non-distance sensitive elements.[13] Finally, US West requests a waiver to permit its November 2 filing to allow for step three in US West's four-step transition to aggregated rates.[14] United requests a waiver to allow United to restate its historical data using its current terminating to originating (T/O) factor, the JTSS factor.[15] United states that if pre-April 1, 1989, data (based on the STARS factor) are not converted, it is inappropriate to compare these data to post-April 1, 1989, data (based on the JTSS factor). Further, United requests that this waiver also allow United to use a recently updated JTSS T/O factor for its projections from January 1,

1990. Finally, United requests a waiver of the September 1, 1989, baseline to allow its filing data to reflect partial implementation of single bill/single tariff meet point billing effective October 1, 1989.

B. *Oppositions*

7. Oppositions to these requests were filed September 18 by AT&T and MCI. AT&T opposes NYT's request to apply all ISW cost changes caused by the amortization of inside wire to the CL rate element. AT&T states that NYNEX's request is inadequately supported and fails to show how NYT is different from any other LEC. AT&T states that NYNEX's request contravenes Commission policy, and argues that it would skew rates and cause customers to make uneconomic, inefficient choices. AT&T asserts that the Commission should order NYT to continue to use cost-based rates.

8. MCI opposes United's request to use the JTSS T/O factor to convert United's historical (STARS) data. MCI also opposes United's request to use the new JTSS T/O factor to correct its actual data and to calculate its January 1, 1990, projections. MCI states that United has failed to establish the statistical validity of the JTSS system, old or new. Further, MCI argues, United has failed to justify correcting any errors; United specified neither what errors were to be corrected, nor what methodology it would use to correct them. MCI asserts that allowing both requests would result in methodical underestimates of United's growth rate of FGC terminating minutes (since JTSS yields lower results than STARS, and the new JTSS yields results still lower than the old JTSS). MCI concludes that we should order United to continue to use the STARS factor, absent clear and detailed support for the use of JTSS.

III. DISCUSSION

9. In the *TUF Order* we emphasized the simplicity and consistency of the November 2 filings that we are seeking.[16] We appended the TUF to provide a consistent format for displaying the effect of each relevant factor applied to update the LEC rate calculations, and stated that each LEC should use the September 1 rates, and the cost and demand figures implied by those rates, as a baseline in order to further the uniformity of the filings. *TUF Order* at para. 6. We noted that we would be reluctant to accede to requests for individualized treatment and exceptions, as these would be likely to enlarge the scope of the filings and impede effective review during the short review period. *Id.* at para. 15. We also stated, however, that we would entertain requests for waiver if supported by a substantial showing of good cause, *id.*, and that rate changes based on factors not included in the TUF filing may be submitted in separate transmittals. *Id.* at para. 11.

10. We have accordingly determined that each LEC required to file in this proceeding shall file a TUF reflecting its rates as they exist as of September 1, 1989.[17] This TUF should include rates in effect on September 1, 1989, together with any exogenous changes that are definite and on the record at that time -- for example, the reflection of recent tax legislation in Illinois and Connecticut. *See* para. 12, *infra*. These TUF filings will thus present an accurate overview of rates in effect and known as of September 1, 1989, and a uniform basis for comparison and departure.

11. At the same time, we recognize that LECs may justify rate changes after September 1, 1989, based on other factors or events, under separate transmittals. If those changes are justified, and their continuation into 1990 is justified, coordination of such changes with rate adjustments in TUF-based filings becomes necessary. If such changes have become effective by the time of the November 2 filing, those changes should be reflected in an updated TUF, filed in addition to the baseline TUF, on November 2, 1989. Changes that are pending at the time of the November 2, 1989, filing should be reflected in additional updated TUFs, one for each pending transmittal, and should be included in the November 2 filing.[18] To the extent that changes are filed to become effective after November 2, 1989, with effective dates no later than January 1, 1990, the transmittal justifying such changes should include a separate update of the TUF displaying and incorporating the proposed modification.

12. The rates actually filed on tariff pages submitted with the November 2 filing should be based on the data contained in that TUF which reflects the transmittal with the latest effective date.

13. For purposes of the baseline TUF filing, we are granting the SNET and Ameritech petitions for waiver to permit the inclusion of recently enacted tax provisions. Further, NYNEX's claim that extraordinary migration of non-premium minutes of use (MOU) to premium MOU due to recent equal access conversions skews the historical demand growth rate and thus misrepresents the future trend appears to be persuasive under the circumstances. Accordingly, we are granting NYNEX's request to use the stated methodology to forecast CCL demand. We are granting United's request to allow United to restate its historical data translated from STARS to JTSS methodology, and to update the JTSS methodology for use with its projected data. We are, however, requiring United to submit in support of its filing specifics demonstrating the validity of the JTSS methodology, explaining what errors it will correct and how, and detailing the accuracy and desirability of these modifications. We are also granting NECA's request to allow for its new TS switched access rate, although the effective date is September 13, 1989.[19]

14. We are not granting waiver requests for changes that are more properly made by separate transmittal. This category includes requests for any tariff revisions currently scheduled for effectiveness after November 2, 1989,[20] as well as those that are discussed in the waiver requests here but have not yet been filed. The SWB requests concerning new Network Reconfiguration Services, consolidation of mileage bands, and repricing of all special access services are in this group. Carriers requesting such modifications should submit separate transmittals detailing and justifying their proposed changes, and including a TUF update that reflects those changes. The waiver requests of these carriers are accordingly denied.

15. We are, however, granting waiver requests for changes that we find justified, that are more reasonably incorporated here and now than by separate transmittal later, and that are scheduled to become effective on or before November 2, 1989. These changes should be reflected in the LECs' updated TUF filed November 2. This category includes Alltel's request to allow it to exclude a rate change based on the SPF transition; Contel's request to omit Contel of Eastern Missouri data, and to include data reflecting the aggregation of its switched and special access rates; SWB's requests to include modifications re-

garding additional inside wire expense, NRC restructuring, and the new special access optional feature;[21] and United's request to reflect the partial implementation of single bill/single tariff meet point billing.

16. We deny NYNEX's request to allow NYT to apply all ISW cost changes caused by the amortization of inside wire to the common line rate element. To allow NYT to do so would be inconsistent with existing Commission requirements and would create unjustifiable individualized treatment.

17. We also take this opportunity to clarify the treatment of exogenous changes regarding inside wire. ISW exogenous changes should include the effects of rate base reductions due to ongoing amortization of ISW as well as changes due to the cessation of ISW amortization.

18. With these decisions and the establishment of a baseline TUF filing reflecting strict adherence to the September 1 baseline, an updated TUF reflecting the *status quo* as of the November 2 filing date, and a requirement of additional updated TUF filings reflecting tariff modifications filed to become effective after November 2, 1989, we have assured that the November 2 filings will be uniform, complete, and consistent, and that they will be updated as needed. We thus meet NECA's need for complete filings as of a date certain to allow for calculations of transitional support amounts (TRS).[22] We are also assuring that other major tariff changes that may become effective, or are scheduled to become effective, prior to January 1, 1990, but that are not yet effective at the time of the November 2 filing, will be reflected in the cost support materials, and available for review in the format established in the *TUF Order*.

19. We again emphasize the importance of the accuracy of the data to be submitted and the requirement that carriers filing errata must do so through the special permission process. It is essential for this Bureau to have accurate data if we are to be able to evaluate and review the November 2, 1989, filing within the time frame we have established.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that the waiver requests of Alltel Service Corporation (Alltel), Ameritech Operating Companies (Ameritech), Contel Corporation (Contel), the National Exchange Carrier Association, Inc. (NECA), Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (SWB), and United Telephone System (United) ARE GRANTED.

21. IT IS FURTHER ORDERED that the waiver request of the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Company (together, US West) IS GRANTED IN PART AND IS OTHERWISE DENIED, as indicated herein.

22. IT IS FURTHER ORDERED that the waiver request of the NYNEX Telephone Companies IS GRANTED IN PART, AND IS OTHERWISE DENIED, as indicated herein.

23. IT IS FURTHER ORDERED that each local exchange carrier subject to the November 2, 1989, filing requirement SHALL FILE tariff update forms as specified herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Commission Requirements for Cost Support Material To Be Filed with January 1, 1990, Access Tariff Revisions, Order, DA 89-1056, released Sept. 1, 1989 (Com.Car.Bur.) (*TUF Order*).

[2] In the *TUF Order* we described abbreviated TUF requirements for Tier 2 companies that file traffic-sensitive tariffs but participate in NECA's common line pool. In order to clarify TUF requirements for these companies, we are attaching an abbreviated TUF to this Order. These companies should use this abbreviated TUF rather than the TUF attached to the *TUF Order*.

[3] Access Tariff Filings Schedules, CC Docket No. 88-326, 3 FCC Rcd 5495 (1988) (*Access Schedule Order*).

[4] Commission Requirements for Cost Support Material To Be Filed with 1989 Annual Access Tariffs, DA 88-1554 (Com.Car.Bur. 1988).

[5] Alltel's request, discussed below, was filed on September 11, 1989, in the form of a letter rather than a waiver request. We are construing it as a waiver request, however, and including it for consideration here.

[6] Alltel states that the subscriber plant factor (SPF) for three Alltel companies is transitioning upward to 25 percent, driving the end user rates upward. Alltel seeks to omit this minimal rate change from its end user rates effective January 1, 1990, thus eliminating unnecessary rate churn.

[7] The recently enacted Illinois statute provides for an increase in the corporate income tax rate, and a new software sales tax. As a result, Ameritech Illinois' revenue requirement increases approximately $1.4 million annually.

[8] Contel notes that Contel of Eastern Missouri accounts for approximately 3 percent of Contel's total cost and demand figures.

[9] NYNEX states that the *TUF Order* methodology produces unrealistically high forecasts of CCL demand for NYNEX companies. NYNEX proposes its own methodology based on total CCL demand, not element-by-element, and using the 1988-89 growth rate for total minutes of use (MOU).

[10] The new state tax legislation includes a corporate business tax surcharge effective July 1, 1989, and retroactive to January 1, 1989, and the elimination of the gross earnings tax effective January 1, 1990. These provisions have a combined effect of reducing SNET's annual interstate revenue requirement by approximately $20 million.

[11] SWB requests a waiver permitting it to include additional inside wire expense effective October 1, 1989; nonrecurring charge (NRC) restructuring effective September 15, 1989; and a new special access optional feature effective October 12, 1989. SWB requests that this waiver also permit SWB to reflect a new Network Reconfiguration Service in Arkansas, SWB's consolidation of mileage bands, and SWB's repricing of all special access services. Transmittals reflecting these changes have not yet been filed.

[12] US West notes that it is also considering the integration of other nonregulated activities to begin January 1, 1990.

[13] US West states that this transition is revenue neutral. Step 3 is scheduled to become effective on January 1, 1990; step four is scheduled to become effective on July 1, 1990.

[14] US West notes that this transition is on the same schedule as the local transport rate transition, and is also revenue neutral.

[15] The terminating to originating factor is derived from a sample of actual AT&T originating and terminating usage in feature group C (FGC) offices. United, like most LECs, does not measure FGC terminating minutes directly, but applies the T/O factor to originating FGC minutes to calculate interstate FGC terminating minutes. Until April 1, 1989, United used the T/O factors produced by the Sampled Traffic Analysis Reporting System (STARS). Beginning April 1, 1989, United has used a factor developed by AT&T, the Jurisdictional Traffic Separations System (JTSS). The JTSS factor produces a substantially lower and allegedly more accurate figure than the STARS factor.

[16] The rates set forth in these filings will be in effect for only six months, and will modify current rates. *See TUF Order* at para. 5.

[17] As noted below, however, we are allowing NECA to file based on September 13, 1989, rates.

[18] Thus, for an individual LEC, the November 2, 1989, filing will include, at a minimum, a baseline TUF, comprising the LEC's tariff information as of September 1, 1989. It may also include an updated TUF, comprising the LEC's tariff information effective as of November 2, 1989. For each filing which is pending as of November 2, 1989, the LEC shall file an additional updated TUF, and shall include these updated TUFs in the November 2, 1989, filing. No updated TUF will be required in some cases.

[19] NECA is not formally required to file the necessary updates in the precise form specified in the TUF, and there will be a minimal loss of consistency by its use of the recent rate changes.

[20] We are making an exception to allow US West to include, without the need of further filings, step three in each of its two four-step transitions discussed above. Although these are scheduled to become effective later than November 2, 1989, we see no purpose that would be served by requiring US West to file a tariff that did not reflect these transitional steps, and then to file tariff revisions. US West's request for a waiver to allow for reflection of some indefinite implementation of additional non-specified integrated activities, however, is not included in this exception.

[21] We will not, however, give SWB permission to include modifications that have not yet been filed. As discussed above, SWB and other LECs should file separate transmittals with appropriate support materials justifying the changes, and with an updated TUF to coordinate the changes with the November 2 adjustments in the event that the separate transmittals become effective as filed.

[22] Companies filing updated TUFs, and rates based upon them, should provisionally incorporate the TRS provided by NECA for the baseline TUF in their updated TUFs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. No. 9 — Transmittal No. 1740

ORDER

Adopted: September 28, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

1. On August 15, 1989, AT&T Communications (AT&T) filed Transmittal No. 1740 to increase the rate for the Television Switch Operation (TSO) option of Terrestrial Television Services (TTS). Transmittal 1740 is scheduled to become effective September 30, 1989. Petitions to reject or suspend and investigate were filed by GE Americom, the Networks, and CNN.[1] AT&T replied on August 31, 1989.

2. The Networks object that Transmittal 1740 would effect by January 1, 1990, a 572 percent increase in the rate for TSO functions. Networks Petition at 1. They estimate that the total cost increase for the three networks alone would be in the range of $500,000 per year. *Id.* at 3. The Networks also contend that this transmittal is inconsistent with price cap regulation, and that it contradicts the Commission's goals of increased efficiency, lower rates, and increased service offerings under price cap regulation. *Id.* at 6. They further contend that AT&T's rate increase for the TSO will force users to investigate possible alternative means to satisfy program transmission requirements. *Id.*

3. The Networks also assert that Transmittal 1740 does not comply with the price cap rules. *Id.* at 8. They maintain that the tariff violates Sections 61.49(a) and 61.49(b) because AT&T's submission does not provide the underlying data necessary to calculate the price cap and service band indices or to establish compliance with the price cap and banding limitations. The Networks also argue that AT&T's submission directly violates the Commission's statement in the Report and Order adopting price cap regulation that AT&T's streamlined tariff filings must be supported by the calculations necessary to demonstrate that the proposed rates were within the limits set by the price cap index and the price bands. *Id.* CNN concurs with the Networks' argument. CNN Petition at 2-3. Alternatively, the Networks suggest AT&T should be directed to refile this transmittal on 45 days' notice as a rate structure change under the price cap rules. Networks Petition at 16-18.

4. GE Americom challenges AT&T's allegation that the rate increase is cost justified because of reduced demand for TSO. GE Americom Petition at 1. GE Americom contends that the costs attributable to the service are virtually all labor-related and variable in nature, rather than fixed. *Id.* at 2. Therefore, it argues, a reduced demand for the service should not have a major effect on unit costs. *Id.* GE Americom also maintains that AT&T has not submitted for analysis the cost study which it claims justifies the new higher rate. *Id. See also* CNN Petition at 2.

5. AT&T replies that the size of an increase for a single rate element of TTS does not raise a question of lawfulness if the increase will not cause the relevant price cap index and service band limits to be exceeded. AT&T Reply at 2. According to AT&T, petitioners' emphasis on the percent increase in the TSO rate element implies that these rate revisions will have a far greater impact on TTS customers than is the case. *Id.* at 2-3. It contends that customers dissatisfied with this increase have marketplace alternatives which will permit them to avoid paying the increase. *Id.* at 3-4. Finally, AT&T denies that this transmittal is a rate restructure. Rather, according to AT&T, this transmittal is a simple rate level change which may be filed on 14 days' notice pursuant to the price cap rules. *Id.* at 7-8.

6. The Common Carrier Bureau has reviewed the tariff transmittal and the pleadings. We conclude that no compelling argument has been presented that the tariff is patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

7. Accordingly, IT IS ORDERED that the petitions to reject or, alternatively, to suspend and investigate the above-captioned transmittal filed by Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company, Inc., GE American Communications, Inc., and Cable News Network ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] GE American Communications, Inc., Petition To Reject or Suspend and Investigate, filed Aug. 22, 1989 (GE Americom Petition); Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company, Inc., Petition To Reject or Suspend and Investigate, filed Aug. 22, 1989 (Networks Petition); Cable News Network, Inc., Petition To Suspend and Investigate, filed Aug. 29, 1989 (CNN Petition). A motion for leave to file petition was also filed by CNN. Comments in support of the Networks' petition were filed by Hughes Television Network (Hughes) on Aug. 29, 1989, and Visnews Limited on Aug. 28, 1989 (Visnews). Hughes and the Networks filed responses to AT&T's reply on Sept. 13, 1989. These responses are not permitted by the Commission's Rules and are therefore dismissed.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. No. 1

Transmittal No. 1785

ORDER

Adopted: September 28, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

1. On September 13, 1989, AT&T Communications (AT&T) filed Transmittal No. 1785 proposing to reduce AT&T Megacom Service usage rates by approximately 5 percent. MCI Telecommunications Corporation (MCI) filed a petition to reject or suspend and investigate the proposed revisions,[1] and AT&T filed a reply.[2] The tariff revisions are scheduled to become effective October 18, 1989.

2. MCI contends that the proposed rates for Megacom Service would result in a service band index (SBI) that would fall below the lower limit applicable to the Megacom Service band. MCI Petition at 1. Therefore, MCI argues, AT&T is required to implement the proposed rates on 45 days' notice rather than the 15 days' notice it gives for this filing.[3] MCI also argues that AT&T is required under the circumstances to provide material establishing that the rates cover the service category's average variable cost. *Id.* MCI maintains that AT&T has not done so because it failed to recognize that the subject reductions result in below band rates. *Id.* at 2. MCI challenges AT&T's calculation of an SBI decline of 2.7 percent and asserts that the reduction is closer to 5 percent.

3. AT&T replies that Transmittal 1785 conforms with Section 61.58(c)(2) of the Commission's Rules because, although it is below the cap for AT&T's business services, it does not cause the SBI for Megacom to exceed its banding limitations. AT&T Reply at 1. It asserts that MCI's claims that these revisions will cause the SBI for Megacom to fall below the lower limit and that, consequently, this filing should have been made on 45 days' notice and been accompanied by additional support material, is based on erroneous calculations. *Id.* According to AT&T, a 5 percent reduction in AT&T Megacom rates does not move the SBI by 5 percent, because other services are also included in the Megacom service band. It argues that MCI's calculations are incorrect because they erroneously assume that Megacom is the only service in the affected service band. *Id.* at 2. In fact, AT&T asserts, Megacom comprises only about one half of the price cap demand base that is included in the Megacom service band because AT&T Calling Card and international demand that is attributable to Megacom is also included in the Megacom band. *Id.* at 2-3. AT&T contends that MCI's calculation totally ignores those services, and consequently overstates the effect of this filing on the Megacom SBI.

4. The Common Carrier Bureau has reviewed the tariff transmittal and the pleadings. We conclude that no compelling argument has been presented that the proposed tariff is patently unlawful so as to require rejection, and that no question has been presented that warrants suspension or investigation at this time.

5. Accordingly, IT IS ORDERED that the petition to reject or, alternatively, to suspend and investigate the above-captioned transmittal filed by MCI Telecommuniations Corporation IS DENIED.

6. IT IS FURTHER ORDERED that AT&T may file to advance the effective date of the proposed revisions, to become effective on same day's notice. For this purpose we assign Special Permission No. 89-723 and waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] MCI Telecommunications Corporation, Petition To Reject or Suspend and Investigate, filed Sept. 21, 1989 (MCI Petition).

[2] American Telephone and Telegraph Company, Reply, filed Sept. 26, 1989 (AT&T Reply).

[3] Transmittal No. 1785, originally scheduled to become effective on September 27, 1989, was subsequently deferred to October 18, 1989. *See* letter from Chief, Tariff Division, to AT&T, Sept. 25, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BELL ATLANTIC TELEPHONE COMPANIES — Transmittal No. 310

Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules To Permit a Call Setup Charge

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 1989 Released: September 29, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In Transmittal No. 310, the Bell Atlantic Telephone Companies (Bell Atlantic) would establish a new "Call Setup" switched access rate element under the Local Switching category. Simultaneously with this transmittal, Bell Atlantic filed a petition for waiver of Sections 69.106 and 69.205 of the Commission's Rules, 47 C.F.R. §§ 69.106, 69.205, to permit it to recover premium (LS2) and non-premium (LS1) access service charges using two complementary rate elements: a per-message Call Setup charge and a per-minute usage charge. Sections 69.106 and 69.205 specify the use of a single rate element for both LS1 and LS2 charges.

2. Seven parties filed petitions to reject the transmittal and oppositions to the waiver petition: Ad Hoc Telecommunications Users Committee (Ad Hoc), Allnet Communications Services, Inc. (Allnet), MCI Communications, Inc. (MCI), Telecom*USA, Inc. (Telecom), Total Tel USA (Total Tel), US Sprint Communications Company Limited Partnership (US Sprint), and Western Union Incorporated (Western Union).[1] The Ameritech Operating Companies (Ameritech), American Telephone and Telegraph Company (AT&T), GTE Telephone Companies (GTE), Southwestern Bell Telephone Company (Southwestern Bell), and the United States Telephone Association (USTA) filed comments or reply comments in support of the waiver request. Transmittal 310 is scheduled to become effective on October 1, 1989.

II. BACKGROUND

3. Sections 69.106 and 69.205 require carriers to express Local Switching rates for LS1 and LS2 services under a single rate element, in dollars and cents per minute of use. Therefore, under the current structure, Local Switching recovers costs associated with call setup -- costs associated with each message, which are not tied to duration, and call maintenance costs, which are tied to call duration. In Transmittal 310, Bell Atlantic purports to identify separately these call setup costs. It plans to recover costs associated with each message via a per call, Call Setup charge and call maintenance costs associated with call duration via the current minutes of use (MOU) charge.[2] Bell Atlantic would apply the Call Setup charge to every originating switched access call receiving an "acknowledgement wink" from a customer's switch.[3]

4. Bell Atlantic claims its proposed realignment of the Local Switching rate structure will be revenue neutral.[4] It states that it will adjust the MOU rate downward to reflect costs recovered via the Call Setup charge.[5] Bell Atlantic also believes its proposal will have a minimal effect on customers. It anticipates that individual switched access customers will be affected depending upon their mix of short and long holding time calls, and to the extent interexchange carriers (ICs) pass on any change in access costs.[6]

5. Bell Atlantic contends that the current local switching rate structure does not differentiate between the costs associated with call setup and the costs incurred while the call is in progress. It claims an internal analysis showed that almost one-half of all access calls are too short in duration to recover their costs. Bell Atlantic states that over the past several years, the average length of a switched access call has dropped by one minute. It believes this occurrence, coupled with the increasing number of short calls, will increase its costs by approximately $25 million. Bell Atlantic maintains that with the Call Setup element, longer calls will no longer be required to recover setup costs left unrecovered by shorter calls.[7] Bell Atlantic also sees a host of other benefits in the Call Setup charge. It believes the new rate element will: (1) allow it to introduce and deploy new services based on the use of Common Channel Signaling System 7 (CCSS-7) technology on a more cost causative basis; (2) reduce the incentive of ICs to use access for artificial reasons in order to gain pricing advantages; and (3) promote rate structure parity between interstate access and its local exchange services.[8]

III. SUMMARY OF PLEADINGS

6. Ameritech, GTE, Southwestern Bell, and USTA, in their comments addressing the waiver petition, support Bell Atlantic's waiver request. They maintain that the current cost recovery method produces an inequitable pricing structure, in which customers making calls of long duration subsidize customers making calls of short duration. They believe Bell Atlantic's proposal will promote more efficient network utilization, and will yield a more equitable, cost-causative access pricing structure.[9] These commenters view the Call Setup charge as merely the first example of the type of rate subelement structure which likely will be necessary to implement impending Commission policy decisions.[10]

7. GTE endorses Bell Atlantic's decision to file a petition for waiver instead of a petition for Rule Making. According to GTE, Bell Atlantic's petition is motivated by a set of conditions which are not necessarily shared by other local exchange carriers (LECs). It believes a Rule Making proceeding would be inappropriate since any resulting rule would be applied uniformly, regardless of local suitability. It states that the waiver process, on the other hand, is designed to allow a LEC with unusual circumstances to request relief without imposing inappropriate regulations upon others.[11]

8. AT&T states that it does not object in principle to the Call Setup charge.[12] However, AT&T says that Bell Atlantic's proposal could impair the verification of access bills, because Bell Atlantic proposes to assess the Call Setup charge upon receipt of an "acknowledgment wink" from an IC's point of presence (POP). AT&T states that currently, ICs such as AT&T do not measure the number of "wink backs" from their POPs to the LECs' access tandems or end offices. According to AT&T, unless appropriate arrangements are made with the LEC prior to implementation of the new rate element, it will be extremely difficult to verify the accuracy of access bills for the Call Setup charge. Furthermore, AT&T notes that because there is no provision for the new rate element in the current standard Carrier Access Billing System (CABS) format used for access bills, special arrangements will be required for it to process Bell Atlantic's access bills. Such special processing, it explains, adds to the expense which ICs must incur in obtaining access from the LECs. Therefore, AT&T asks the Commission to defer action on Bell Atlantic's petition until the Ordering and Billing Forum of the Exchange Carrier Standards Association can adopt an industry-wide standard that will permit uniform processing of access bills and verification of Call Setup charges.[13]

9. Ad Hoc, Allnet, MCI, Telecom, Total Tel, US Sprint, and Western Union filed timely oppositions. They argue generally that: (1) Bell Atlantic should have filed a petition for Rule Making rather than a waiver petition;[14] (2) Bell Atlantic has failed to meet the legal requirements for a waiver, *i.e.*, to show unique or extraordinary circumstances, substantial harm if its request is not granted, and furtherance of the public interest;[15] (3) Bell Atlantic filed inadequate cost support data to support the tariff rates;[16] (4) contrary to Bell Atlantic's claims, its rate changes will not be revenue neutral;[17] (5) the plan is inconsistent with the Commission's separations rules;[18] (6) the plan will result in more complex billing;[19] and (7) the plan is too disruptive -- restructuring of this nature should be made only at the time of the annual access filings when it can be evaluated as part of the overall access tariff scheme.[20]

10. In its reply comments, Bell Atlantic addresses four main contentions of the opposing parties. At the outset, Bell Atlantic disputes their suggestion that the Call Setup charge is inconsistent with the current rules. According to Bell Atlantic, the only change it proposes is in the rate structure used to recover the costs incurred to provide service. Bell Atlantic explains that it is not seeking a change in the way local switching costs are developed pursuant to the Commission's rules. Since there will be no effect on the development of costs for the Local Switching rate element, Bell Atlantic maintains there is no need to address the separations impact of its plan.[21]

11. Second, Bell Atlantic claims it has presented sufficient evidence to justify grant of its waiver request. It reiterates its contention that the proliferation of services using short holding times in its service territory will likely result in substantial cost increases for local switching over the next few years.[22] Bell Atlantic maintains that it will suffer financial harm if it is prohibited from implementing the Call Setup charge. According to it, the opposition believes the current rate structure is not causing Bell Atlantic harm because it remains subject to rate base/rate of return regulation; they believe Bell Atlantic can always adjust its rates if a problem develops. If this claim were valid, Bell Atlantic continues, there would be no reason to have any cost-based prices.[23]

12. Third, Bell Atlantic argues that its projections of the effect of the existing rate structure are accurate and its projections of increased costs fully supported. Bell Atlantic explains that it calculated the increase by using its projection of increasing numbers of calls with short holding times as an overlay on its current forecast of access minutes of use for the period 1990 through 1994. It states that the relatively higher number of short calls means that it will experience a higher total number of calls, with each call incurring $.0058 in setup costs. The $25 million overall increase in costs, it claims, is simply the sum of the costs of these additional calls.[24]

13. Fourth, Bell Atlantic disputes the opponents' claims that the proposed Call Setup charge will cause ICs to institute significant changes. It states that because most ICs already have rates that include higher per-minute rates at the beginning of the call, the Call Setup charge will match those carriers' costs (in the form of originating access charges) more closely to their rates.[25] According to Bell Atlantic, Allnet's claim that the proposed rate structure will increase by 45 percent the costs of originating access for a one minute call is simply wrong. It explains that while the charge for Local Switching for that call will increase 45 percent, the average originating switched access rate for the call, including charges for Local Transport and Common Line, will increase by less than 15 percent.[26]

14. Finally, in response to AT&T's expressed concern that Call Setup charges would be difficult to verify, Bell Atlantic states that it has followed the national industry accepted procedures for access billing. Specifically, it has approached the CABS Billing Output Specification Technical Review Group and initiated appropriate procedures for attaining national standardization of the Call Setup charge. Bell Atlantic explains that in the interim, changes to access billing will be addressed through coordination with Bellcore. It states that the temporary billing assignments obtained through Bellcore will be incorporated into the national standard.[27]

IV. DISCUSSION

15. After an extensive review of Bell Atlantic's petition and the accompanying pleadings, we conclude that the waiver process is not the appropriate vehicle for effecting such a substantial change in the Commission's Rules. We believe the establishment of a new access rate structure of the type proposed here, in response to a waiver request filed by a single carrier, would be unnecessarily disruptive to access customers. For one thing, the short pleading cycle established for the waiver request and accompanying transmittal made it difficult for access customers to evaluate Bell Atlantic's proposal thoroughly. For another, an abrupt change in the Local Switching element could undermine access customers' business plans which were based on a reasonable expectation of stability in the access rate structure. In addition, Bell Atlantic's representations have failed to convince us that Bell Atlantic faces any unique circumstances with regard to its asserted potential increase in its costs. We believe that a more comprehensive proceeding is necessary to determine whether the Commission's rules should be modified.

16. Given these considerations, we conclude that Bell Atlantic should have filed a petition for Rule Making rather than a petition for waiver. Given the significant industry implications of implementing a Call Setup charge, we believe the rule waiver process is not a proper one for effecting such a change. Our decision to deny this petition for waiver does not imply that the rate structure suggested by Bell Atlantic would not be desirable. The Commission can address that question if Bell Atlantic chooses to file a petition for Rule Making.

17. In light of our denial of Bell Atlantic's request for waiver of Sections 69.106 and 69.205 of the Commission's Rules, we must reject Transmittal 310. The transmittal is not consistent with the Commission's current Rules. Under those rules, Local Switching rates for LS1 and LS2 service must be contained in a single rate element.

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that Bell Atlantic Telephone Companies petition for waiver of Sections 69.106 and 69.205 of the Commission's Rules, 47 C.F.R. §§ 69.106, 69.205, IS DENIED.

19. IT IS FURTHER ORDERED that Bell Atlantic Telephone Companies Transmittal No. 310 IS REJECTED.

20. IT IS FURTHER ORDERED that the comments of Advanced Telecommunications Corporation and VISA U.S.A/MasterCard International, Inc., ARE DISMISSED as untimely filed.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] VISA U.S.A., Inc./MasterCard International and Advanced Telecommunications Corporation filed oppositions to the Bell Atlantic proposal on June 28, 1989, and July 12, 1989, respectively. The pleading cycle for comments on that proposal ended June 8, 1989. Neither of the above oppositions was accompanied by a motion to accept late filed comments. We dismiss these comments as untimely filed.

[2] Bell Atlantic Petition for Waiver at 1-2.

[3] Bell Atlantic Description and Justification (D&J) at 1-2. Bell Atlantic states, however, that the Call Setup charge will apply only to originating access. While setup costs are incurred for terminating switched access calls as well, it explains that the current recording and billing systems for call termination will require significant modification prior to implementation of terminating call setup charges. Therefore, it is not proposing any change in that rate structure at this time. D&J at 1-7 to 1-8.

[4] *Id.* at 1-7.

[5] *Id.* at 1-2.

[6] *Id.* at 1-7.

[7] *Id.* at 1-3 to 1-5.

[8] *Id.* at 1-5 to 1-7.

[9] *See, e.g.*, Southwestern Bell Comments at 2; Ameritech Comments at 3.

[10] *See, e.g.*, Southwestern Bell Comments at 2; GTE Comments at 3.

[11] GTE Comments at 4-5.

[12] AT&T Comments at 1.

[13] *Id.* at 2.

[14] *See, e.g.*, US Sprint Comments at 2-5; Ad Hoc Comments at 4-8; Western Union Comments at 2-4. AT&T also notes in its comments that "Bell Atlantic's petition does not describe any unique or extraordinary circumstances necessitating this proposed rate structure, which the Commission has previously required to justify a waiver of its rules." AT&T Comments at 1.

[15] *See, e.g.*, Telecom Comments at 2-4; MCI Comments at 4.

[16] *See, e.g.*, US Sprint Comments at 5-7; Ad Hoc Comments at 9-10.

[17] *See, e.g.*, Allnet Comments at 7; MCI Comments at 3.

[18] *See, e.g.*, Allnet Comments at 4.

[19] *See, e.g.*, MCI Comments at 5; Allnet Comments at 8-9.

[20] *See, e.g.*, Total Tel Comments at 2-3.

[21] Bell Atlantic Reply at 1-2.

[22] *Id.* at 2-3.

[23] *Id.* at 6.

[24] *Id.* at 4.

[25] *Id.* at 5.

[26] *Id.*

[27] *Id.* at 6.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 80-286
CC Docket No. 78-72

In the Matter of

Amendment of Part 36
of the Commission's Rules
and Establishment of a
Joint Board

MTS and WATS Market Structure

ORDER

Adopted: September 26, 1989; Released: October 6, 1989

By the Commission:

1. On August 15, 1989, the National Association of Regulatory Utility Commissioners, pursuant to Section 410(c) of the Communications Act,[1] nominated Thomas M. Beard, a member of the Florida Public Service Commission, to serve on the Joint Board in CC Docket No. 80-286.[2] Commissioner Beard would fill the vacancy on the Joint Board resulting from the departure of Edward B. Hipp of North Carolina.

2. Pursuant to Section 410(c) of the Communications Act, we hereby appoint Commissioner Beard to serve on the Joint Board established in CC Docket No. 80-286. Henceforth a copy of all filings in this proceeding shall be served on Commissioner Beard at the following address:

The Honorable Thomas M. Beard, Commissioner
Florida Public Service Commission
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850
Telephone (904) 488-6943

3. ACCORDINGLY, IT IS ORDERED that the Honorable Thomas M. Beard shall serve as a state member of the Joint Board in CC Docket 80-286.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] 47 U.S.C. § 410(c) (1985).

[2] Letter from Paul Rodgers, General Counsel, National Association of Regulatory Utility Commissioners, to Alfred C. Sikes, Chairman, Federal Communications Commission, dated August 15, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WHBQ-TV) Memphis, Tennessee	**MM DOCKET NO. 84-1212** File No. BRCT-790402LC
For Renewal of License	
SOUTH JERSEY RADIO, INC. Memphis, Tennessee	**MM DOCKET NO. 84-1213** File No. BPCT-830511KE
NEW SOUTH MEDIA COMPANY Memphis, Tennessee	**MM DOCKET NO. 84-1214** File No. BPCT-830512KE
GREATER MEMPHIS COMMUNICATIONS, LTD. Memphis, Tennessee	**MM DOCKET NO. 84-1218** File No. BPCT-830512KI
RIVER CITY COMMUNICATIONS CORPORATION Memphis, Tennessee	**MM DOCKET NO. 84-1219** File No. BPCT-830512KJ
SHELBY BROADCASTING LIMITED PARTNERSHIP Memphis, Tennessee	**MM DOCKET NO. 84-1220** File No. BPCT-830512KL
MEMPHIS TELECASTERS, LTD. Memphis, Tennessee	**MM DOCKET NO. 84-1221** File No. BPCT-830512KM
COZZIN COMMUNICATIONS OF MEMPHIS, INC. Memphis, Tennessee	**MM DOCKET NO. 84-1222** File No. BPCT-830512KN
RIVER CITY BROADCASTING, LTD. Memphis, Tennessee	**MM DOCKET NO. 84-1224** File No. BPCT-830512KP
For Construction Permit For a New Television Station	

ORDER

Adopted: September 28, 1989; Released: October 6, 1989

By the Commission: Commissioner Dennis concurring and issuing a statement.

1. Before the Commission are: (1) a Motion for Partial Stay of Proceedings before the Review Board filed August 1, 1989 by RKO General, Inc. (the motion incorporates by reference portions of the parties' Joint Petition for Approval of Settlement Agreement and Related Relief, also filed August 1); and (2) the Mass Media Bureau's Comments on Motion for Partial Stay of Proceedings before the Review Board filed August 8, 1989.

2. On August 1, 1989, the parties to the comparative renewal proceeding involving station WHBQ-TV, Memphis, Tennessee submitted a settlement agreement. The agreement calls for the assignment of WHBQ-TV, now licensed to RKO, to Adams TV of Memphis, Inc. RKO, on behalf of the parties to the settlement, requests that the Commission hold this proceeding in abeyance -- with the exception of one matter -- pending consideration of the settlement agreement.

3. The parties seek this relief because the Commission ordered the Review Board to rule on exceptions to partial initial decisions ranking the qualifications of the competing applicants in this proceeding and other proceedings involving RKO-owned stations. *RKO General, Inc. (WHBQ-TV)*, 4 FCC Rcd 1532 (1989). If the Commission approves the settlement, further action by the Board in this proceeding would be superfluous in most respects.

4. As to one matter, however, the parties seek a further Commission determination. In the partial initial decision in this proceeding, Administrative Law Judge Richard L. Sippel held that applicant Memphis Telecasters, Ltd., lacked the basic qualifications to be a Commission licensee because its principal H. A. Gilliam, Jr. engaged in misconduct. *RKO General, Inc. (WHBQ-TV)*, 2 FCC Rcd 4111, 4131-34, 4135-37 ¶¶ 202-220, 232-48 (I.D. 1987).

5. Dismissal of Telecasters' appplication would, of course, moot the question of whether Gilliam's alleged misconduct adversely affected Telecasters' qualifications to be the licensee of WHBQ-TV. Gilliam, however, is also a principal of Gilliam Communications, Inc., the licensee of station WLOK in Memphis, and he also might seek to acquire further broadcast interests in the future. The allegations against Gilliam could be revisited in proceedings involving WLOK or a proposal to acquire a new station. *See Allegan County Broadcasters, Inc.*, 83 FCC 2d 371, 373-74 ¶ 6 (1980). Hence, the parties' settlement agreement conditions Telecasters' obligations on a Commission determination that Gilliam's alleged misconduct would not affect his qualifications to hold other stations. *Settlement Agreement* ¶ 5.1.

6. Ordinarily, at the time a proceeding is designated for hearing, the Commission makes a determination whether the allegations raised against an applicant affect that applicant's ability to retain or acquire other stations. *See Character Qualifications*, 102 FCC 2d 1179, 1220-25 ¶¶ 83-95 (1986), recon. denied, 1 FCC Rcd 421 (1986) (discussing the policy, originally enunciated in *Grayson Enterprises, Inc.*, 79 FCC 2d 936 (1980) and modified by *Transferability of Broadcast Licenses*, 53 RR 2d 126 (1983)). Here, because the allegations against Gilliam

were raised after designation, no *Grayson* determination was made. The parties ask the Commission to direct the Board to make the requisite *Grayson* determination. (The parties emphasize that they are not asking the Board to review the merits of the ALJ's findings, but to consider the separate question of whether "there is a substantial likelihood that the allegations warranting designation of one station for hearing bear upon the operation of other stations." *Grayson*, 79 FCC 2d at 940 ¶ 10.)

7. The Mass Media Bureau indicates that it has no objection to a ruling that would permit the transfer of WLOK or clarify the ability of Gilliam to acquire additional licenses. The Bureau notes that, in pleadings previously filed, it agreed with Telecasters that no misconduct occurred.

8. We will hold this proceeding in abeyance as the parties request. In an order establishing procedures for the RKO cases, we held that, if we are informed that a settlement agreement has been reached in any of these proceedings, that proceeding would be held in abeyance. *RKO General, Inc. (WHBQ-TV)*, 2 FCC Rcd 1626, 1627-28 ¶ 9 (1987). *See* also *RKO General, Inc. (WOR)*, 4 FCC Rcd 4082 (1989) (granting the type of relief requested here). This approach reflects our intent to resolve these proceedings expeditiously consistent with the public interest and the efficient use of administrative resources.

9. As to the *Grayson* question, we will grant the requested relief in modified form. In other RKO proceedings, the Commission has dealt with the status of the partial initial decisions as part of our consideration of the proposed settlement. We have in those cases routinely granted parties' requests to vacate the partial decisions as moot. *See*, for example, *RKO General, Inc. (WGMS)*, 3 FCC Rcd 5262, 5263 ¶ 12 (1988). Although, here, the parties ask us to allow the Board to make a *Grayson* determination, we believe that it would be appropriate for us to do so as part of our review of the settlement.

10. We therefore direct the parties to file comments with the Commission addressing the merits of the *Grayson* determination. We also direct the Mass Media Bureau to submit its views on the issue. Additionally, we direct the Board to certify to the Commission the exceptions and replies relating to Gilliam's qualifications.

11. ACCORDINGLY, IT IS ORDERED, That the Motion for Partial Stay of Proceedings Before the Review Board filed August 1, 1989 by RKO General, Inc. IS GRANTED to the extent indicated herein and otherwise IS DENIED; that this proceeding IS HELD IN ABEYANCE pending Commission consideration of the proposed settlement; and that the Review Board IS DIRECTED to take no further action on the exceptions filed in this proceeding concerning MM Docket Nos. 84-1212 through 84-1224.

12. IT IS FURTHER ORDERED, That those parties wishing to address the *Grayson* question, and the Mass Media Bureau, ARE DIRECTED to file comments not to exceed 10 pages on the merits of the *Grayson* determination, as provided in paragraph 10, above, within 15 days of the release date of this order. Reply comments may be filed within ten days thereafter.

13. IT IS FURTHER ORDERED, That the Review Board IS DIRECTED to certify to the Commission the exceptions and replies referred to in paragraph 10, above.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

SEPARATE STATEMENT
OF
COMMISSIONER PATRICIA DIAZ DENNIS

In Re: RKO General, Inc. (WHBQ-TV), Memphis, Tennessee MM Docket No. 84-1212, FCC 89-

I concur in the result. I would not have approved any settlements until we ruled on RKO's basic qualifications. *See* Dissenting Statement of Commissioner Patricia Diaz Dennis, *RKO General, Inc.*, 3 FCC Rcd 5057, 5067 (1988). Nevertheless, because the majority approved comprehensive settlements for other RKO stations, precedent obliges us to review the settlement agreement in this case. Therefore, I reluctantly agree that we should hold this proceeding in abeyance pending consideration of the settlement agreement.

I agree with the procedure we adopt to address the basic qualifications of H.A. Gilliam, Jr.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems	**MM Docket No. 85-349**
Amendment of Part 15 of the Commission's Rules Concerning Input Selector Switches Used in Conjunction with Cable Television Service	**GEN Docket No. 87-107**
Amendment of Section 76.62(c) of the Commission's Rules	RM-6152

ERRATUM

Released: October 6, 1989

1. On May 18, 1989, the Commission eliminated the mandatory television broadcast signal carriage rules for cable systems, lifted the stay of the input selector switch offer and consumer education requirements, and revised the date by which cable systems must comply with those requirements. *Order* in MM Docket No. 85-349 and GEN Docket No. 87-107, 54 FR 25715, (June 19, 1989). It has come to our attention that a paragraph was inadvertently omitted from the redesignation of the paragraph sequence in Section 76.5 of the rules as amended in the Appendix of that *Order*. The last paragraph (nn) of Section 76.5 should now be designated paragraph (ii). Also, after the redesignation of these paragraphs, several of the paragraphs contain incorrect references to other paragraphs within this section. A rule section in Part 74 and several other rule sections in Part 76 also contain incorrect references to paragraphs within this section. These errors are corrected below.

Accordingly, Part 74 and Part 76 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154 and 303.

2. Section 74.801 is amended by revising the internal reference to another rule section in the first definition to read as follows:

§74.801 Definitions.

Cable television system operator. A cable television operator is defined in §76.5(cc) of the rules.

* * * * *

3. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, and 521.

4. Section 76.5 is amended by redesignating paragraph (nn) as (ii), and by revising the internal references to other rule sections in paragraphs (k), (o) and (q) to read as follows:

§76.5 Definitions

* * * * *

(k) Partial network station. A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) of this section.

* * * * *

(o) Cablecasting. Programming (exclusive of broadcast signals) carried on a cable television system. *See* paragraphs (y), (z) and (aa) (Classes II, III, and IV cable television channels) of this section.

* * * * *

(q) Legally qualified candidate. (1) Any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and,

(iii) Has met the qualifications set forth in either paragraphs (q)(2), (3) or (4) of this section,

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (q) (1) of this section, that person:

(i) Has qualified for a place on the ballot, or

(ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States

or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (q)(1) and (2) of this rule; except, that any such person who has met the requirements set forth in paragraph (q) (1) and (2) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (q)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination; except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (q)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary of Presidential preference ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory of the District of Columbia; except that such person meeting the requirements set forth in paragraph (q)(1) and (4) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of the Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraph (q)(2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

* * * * *

5. Section 76.33 paragraph (a)(1) is amended by revising the internal reference to another rule section to read as follows:

§76.33 Standards for rate regulation.

(a) * * *

(1) Only basic cable service as defined in §76.5(gg) may be regulated;

* * * * *

6. Section 76.66(c)(6) is amended by revising the internal reference to another rule section to read as follows:

§76.66 Input selector switches and consumer education.

* * * * *

(c) * * *

* * * * *

(6) Identify for their subscribers, by call sign and channel number, any full service broadcast signals not carried on the cable system whose predicted Grade B contour covers any portion of the cable community or that are "significantly viewed" in the cable community, as defined in §76.5(i) of the rules (the list of stations must be current to within one month of the distribution of the information required pursuant to this paragraph);

* * * * *

7. Section 76.67(a) is amended by revising the internal reference to another rule section to read as follows:

§76.67 Sports broadcasts.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§76.5(gg)(1) through 76.5(gg)(3) of this part. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

* * * * *

8. Section 76.400 is amended by revising the internal reference to another rule section in paragraph (a) to read as follows:

§76.400 Operator, mail address, and operational status changes.

* * * * *

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. *See* §76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31, 43,
67, and 69 of the FCC's Rules)

ERRATUM

Released: August 29, 1989

By the Chief, Common Carrier Bureau:

1. We are making a number of minor technical changes to correct errors in the instructions and specifications contained in the Quarterly Report Order, (FCC Report 43-01), released January 6, 1989 (DA 88-2067). Because these changes affect numerous pages in the instructions and specifications, we are releasing them in their entirety in the attached Appendix. Revised pages are indicated as such by "Rev." in the upper right hand corner of those pages.

2. The specific changes to Table I of the Quarterly Report, all of which are effective as of January 1, 1989, are as follows:

(1) The "Revenues From Local Network Services" classification is moved from row 1020 to row 1010 and retitled "Basic Local Service".

(2) The "Revenues From Network Access" classification is moved from row 1010 to row 1020 and retitled "Network Access Services".

(3) A row is added for "Equal Access" expenses (row 1110).

(4) The "Access" expense classification is moved from row 1150 to row 1170.

(5) A row is added for "Interest and Related Items" (row 1310).

(6) A row is added for "Income Effects of Jurisdictional Ratemaking Differences" (row 1320).

(7) The general classification heading "FIT", covering rows 1510 through 1590, is changed to "Federal Income Taxes".

(8) The "Fixed Charges" classification is moved from row 1340 to the "Federal Income Taxes" section and renumbered (row 1510).

(9) A row is added for "Equal Access Investment" (row 1610).

(10) A row is added for "Operator Systems Equipment" (row 1630).

(11) The "Information Orig./Term. Equipment" classification is retitled "IOT Equipment" (row 1670).

(12) A row is added for "Investment in Nonaffiliated Companies" (row 1740).

(13) The "Material and Supplies" classification is retitled "Inventories" (row 1760).

(14) A row is added for "Other Jurisdictional Assets- Net" (row 1810).

(15) The "Lifeline Adjustment" classification is moved from row 1970 to row 1950.

(16) The "Universal Service Fund" classification is moved from row 1980 to row 1960.

(17) The "Common Line Support" classifications are moved from rows 1950 and 1960 to rows 1970 and 1980.

(18) The general classification heading "Miscellaneous", covering rows 1950 through 1980, is changed to "Miscellaneous Data".

(19) Where necessary, rows are renumbered to accommodate the above changes. Row number references, below, refer to the revised row numbers.

(20) "N/As" are deleted from: column (c) row 1710; column (d) rows 1520, and 1530; column (e) rows 1520, 1530 and 1730; column (f) rows 1950 and 1960; column (h) rows 1970 and 1980; column (t) rows 1970 and 1980; and, column (v) row 1170.

(21) "N/As" are inserted in: column (b) rows 1320, 1730, and 1910; column (c) rows 1110, 1170, 1320, 1520, 1610, 1730, and 1910; column (d) rows 1110, 1320, 1590, and 1610; column (e) rows 1110, 1320, 1590, 1610, 1770, and 1910; column (f) rows 1770, and 1910; column (g) rows 1770 and 1910; column (h) rows 1170 and 1320; column (i) rows 1010, 1030, 1110, 1170, 1320, 1610, 1630, 1640, 1810, 1950, 1960, 1970 and 1980; column (j) rows 1010, 1030, 1110, 1170, 1320, 1610, 1630, 1640, 1650, 1660, 1810, 1950, 1960, 1970 and 1980; column (k) rows 1010, 1030, 1110, 1170, 1320, 1610, 1630, 1640, 1810, 1950 and 1960; column (l) all rows; column (m) rows 1010, 1030, 1110, 1170, 1320, 1610, 1630, 1640, 1810, 1950 and 1960; column (n) rows 1010, 1030, 1170, 1320, 1650, 1660, 1670, 1810, 1950, and 1960; column (o) rows 1010, 1030, 1040, 1120, 1170, 1320, 1630, 1640, 1650, 1660, 1670, 1710, 1720, 1810, 1840, 1950, and 1960; column (p) rows 1010, 1030, 1110, 1170, 1320, 1610, 1670, 1810, 1950, and 1960; column (q) rows 1010, 1030, 1110, 1170, 1320, 1610, 1640, 1650, 1660, 1670, 1810, 1950, and 1960; column (r) rows 1010, 1030, 1170, 1320, 1670, 1810, 1950, and 1960; column (s) rows 1010, 1030, 1110, 1170, 1320, 1610, 1630, 1810, 1950 and 1960; column (t) rows 1010, 1030, 1170, 1320, 1810, 1950, and 1960; column (u) rows 1010, 1030, 1110, 1320, 1610, 1630, 1640, 1650, 1660, 1670, 1810, 1910, 1950, and 1960; and, column (v) rows 1010, 1110, 1320, 1610, 1810, 1910, 1950 and 1960.

(22) Instructions are inserted for rows 1110, 1310, 1320, 1610, 1630, 1740 and 1810.

(23) Instructions for rows 1030, 1040, 1050, 1090, 1170, 1185, 1190, 1330, 1340, 1360, 1370, 1390, 1410, 1420, 1510, 1540, 1590, 1690, 1750, 1790, 1850, 1860, 1870, 1880, 1890, 1915, 1950, 1970 and 1980 are revised to provide clarification of each of these items.

(24) Instructions for row 1930 are corrected.

(25) Column descriptions for "All Other Adjustments," "Common Line," "Pay," "Inside Wire," "Base Factor Portion (BFP)," "Customer Premises Equipment," "Switching" and "Equal Access" are revised to provide clarification of each of these items.

3. The specific changes to Table II of the Quarterly Report, and the effective dates of these changes, are as follows:

	Effective Date
(1) The heading "Monthly Data" is changed to "Monthly Data - End of Quarter View."	January 1, 1989
(2) Rows 2070 and 2080 are eliminated.	January 1, 1989
(3) Definitions for rows 2010 through 2060 are revised to indicate the applicable Part 69 section of the Commission's Rules.	April 1, 1989
(4) Definitions for rows 2090 through 2140 are revised to indicate that data reported are in service at the end of the reporting quarter.	April 1, 1989

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX

This document provides the instructions for FCC Report 43-01, the ARMIS Quarterly Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

NOTE: These instructions supersede and completely replace the previous instructions, dated November 1988. The changes incorporated in this appendix are listed in the text of the Erratum.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-01, the ARMIS Quarterly Report, to the Commission.

B. General Information

1. FCC Report 43-01 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues for the preceding year in excess of $100 million.

2. Affected carriers shall file by March 31, June 30, September 30 and December 31 of each year the report for the previous calendar quarter. The initial report in this revised format will be filed in September 1989 and will contain data for the first quarter of calendar year 1989.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-01, which identifies the filing as the ARMIS Quarterly Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if

needed for successive revisions to correct that quarter's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-01 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from the procedures prescribed by the Commission's rules.

3. Significant out-of-period adjustments must be footnoted and fully explained.

4. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-01. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-01 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 21 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-01, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. **Public Information**

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-01 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-01 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-01, the ARMIS Quarterly Report, and lists the revenue, revenue requirement, and demand data which must be provided quarterly by study area. It contains the following:

	Pages
Table I - Cost and Revenue Table	2 and 3
Table II - Demand Analysis Table	4
Table I Row Instructions	5 thru 9
Table I Column Descriptions	10 thru 12
Table II Demand Analysis Table Definitions	13 thru 16
Certification	17

All monetary figures must be rounded to the nearest thousand dollars. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 decimal places. All minutes of use figures must be rounded to the nearest thousand; all access line figures must be provided to the nearest whole number.

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Quarterly Report collects highly aggregated financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36 and 69. This report also includes a demand analysis table containing interstate access demand data. The ARMIS Quarterly Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification (a)	Total (b)	Nonreg (c)	SNFA and Intra-co Adjustments (d)	All Other Adjustments (e)	Subject to Separations (f)	State (g)	Interstate (h)	Common Line Pay (i)	Common Line Inside Wire (j)	Common Line BFP (k)	Common Line CPE (l)	Common Line Total (m)
	Revenues												
1010	Basic Local Service		N/A						N/A	N/A	N/A	N/A	N/A
1020	Network Access Services		N/A									N/A	
1030	Toll Network Services		N/A						N/A	N/A	N/A	N/A	N/A
1040	Miscellaneous											N/A	
1050	Settlements		N/A									N/A	
1060	Uncollectibles											N/A	
1090	Net Revenues												
	Expenses												
1110	Equal Access		N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1120	Plant Specific											N/A	
1130	Plant Non-Specific											N/A	
1140	Customer Operations Marketing											N/A	
1150	Customer Operations Services											N/A	
1160	Corporate Operations											N/A	
1170	Access		N/A					N/A	N/A	N/A	N/A	N/A	N/A
1180	Depreciation/Amortization											N/A	
1185	FCC Expense Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1190	Total Operating Expenses												
	Other Operating Items												
1290	Other Operating Income/Losses											N/A	
	Non-operating Items											N/A	
1310	Interest and Related Items							N/A	N/A	N/A	N/A	N/A	N/A
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	N/A							N/A	
1330	Extraordinary Items											N/A	
1340	AFUDC											N/A	
1350	Special Charges											N/A	
1360	All Other Non-operating Items											N/A	
1370	FCC Non-operating Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1390	Total Non-operating Items												
	Other Taxes												
1410	State and Local Income											N/A	
1420	Other State and Local											N/A	
1490	Total Other Taxes												
	Federal Income Taxes												
1510	Fixed Charges											N/A	
1520	IRS Income Adjustment		N/A									N/A	
1530	FCC Taxable Income Adjustment	N/A	N/A			N/A	N/A					N/A	
1540	ITC Amortization											N/A	
1550	FCC ITC Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1590	Net FIT			N/A	N/A								
	Plant-in-Service												
1610	Equal Access Investment		N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1620	Support Plant											N/A	
1630	Operator Systems Equipment								N/A	N/A	N/A	N/A	N/A
1640	COE-Switching								N/A	N/A	N/A	N/A	N/A
1650	COE-Transmission									N/A		N/A	
1660	Cable and Wire Facilities									N/A		N/A	
1670	IOT Equipment											N/A	
1680	Amortizable Assets											N/A	
1690	Total Plant												
	Other Investments												
1710	Property Held for Future Use											N/A	
1720	Plant Under Construction											N/A	
1730	Plant Acquisition Adjustment	N/A	N/A	N/A								N/A	
1740	Investment in Nonaffiliated Cos											N/A	
1750	Other Deferred Charges											N/A	
1760	Inventories											N/A	
1770	Cash Working Capital	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1780	FCC Investment Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1790	Total Other Investments												
	Reserves												
1810	Other Jurisdictional Assets-Net								N/A	N/A	N/A	N/A	N/A
1820	Accumulated Depreciation											N/A	
1830	Accumulated Amortization											N/A	
1840	Deferred FIT											N/A	
1850	Customer Deposits					N/A						N/A	
1860	Other Accrued Liabilities											N/A	
1870	Other Deferred Credits											N/A	
1880	All Other Reserve Items											N/A	
1885	FCC Reserve Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1890	Total Reserves												
	Return Data												
1910	Average Net Investment	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1915	Net Return	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1920	Rate of Return	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1925	FCC Ordered Refund	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1930	Net Return Including FCC Refund	N/A	N/A	N/A	N/A	N/A	N/A					N/A	
1935	Rate of Return (including refund)	N/A	N/A	N/A	N/A	N/A	N/A						
	Miscellaneous Data												
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A		N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A						

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0795
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE 1

TABLE 1 - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive					Special	Total	Billing &	
Row	Classification	Switching	EqualAccess	Transport	Information	Total	Access	Access	Collection	II
	(a)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)
	Revenues									
1010	Basic Local Service	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1020	Network Access Services								N/A	N/A
1030	Toll Network Services	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1040	Miscellaneous		N/A							
1050	Settlements									
1060	Uncollectibles									
1090	Net Revenues									
	Expenses									
1110	Equal Access			N/A	N/A		N/A		N/A	N/A
1120	Plant Specific		N/A							
1130	Plant Non-Specific									
1140	Customer Operations Marketing									
1150	Customer Operations Services									
1160	Corporate Operations									
1170	Access	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
1180	Depreciation/Amortization									
1185	FCC Expense Adjustment									
1190	Total Operating Expenses									
	Other Operating Items									
1290	Other Operating Income/Losses									
	Non-operating Items									
1310	Interest and Related Items									
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1330	Extraordinary Items									
1340	AFUDC									
1350	Special Charges									
1360	All Other Non-operating Items									
1370	FCC Non-operating Adjustment									
1390	Total Non-operating Items									
	Other Taxes									
1410	State and Local Income									
1420	Other State and Local									
1490	Total Other Taxes									
	Federal Income Taxes									
1510	Fixed Charges									
1520	IRS Income Adjustment									
1530	FCC Taxable Income Adjustment									
1540	ITC Amortization									
1550	FCC ITC Adjustment									
1590	Net FIT									
	Plant-in-Service									
1610	Equal Access Investment			N/A	N/A		N/A		N/A	N/A
1620	Support Plant									
1630	Operator Systems Equipment		N/A				N/A		N/A	
1640	COE-Switching		N/A		N/A				N/A	
1650	COE-Transmission	N/A	N/A		N/A				N/A	
1660	Cable and Wire Facilities	N/A	N/A		N/A				N/A	
1670	IOT Equipment	N/A	N/A	N/A	N/A	N/A			N/A	
1680	Amortizable Assets									
1690	Total Plant									
	Other Investments									
1710	Property Held for Future Use		N/A							
1720	Plant Under Construction		N/A							
1730	Plant Acquisition Adjustment									
1740	Investment in Nonaffiliated Cos									
1750	Other Deferred Charges									
1760	Inventories									
1770	Cash Working Capital									
1780	FCC Investment Adjustment									
1790	Total Other Investments									
	Reserves									
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1820	Accumulated Depreciation									
1830	Accumulated Amortization									
1840	Deferred FIT		N/A							
1850	Customer Deposits									
1860	Other Accrued Liabilities									
1870	Other Deferred Credits									
1880	All Other Reserve Items									
1885	FCC Reserve Adjustment									
1890	Total Reserves									
	Return Data									
1910	Average Net Investment								N/A	N/A
1915	Net Return								N/A	N/A
1920	Rate of Return								N/A	N/A
1925	FCC Ordered Refund								N/A	N/A
1930	Net Return Including FCC Refund								N/A	N/A
1935	Rate of Return (including refund)								N/A	N/A
	Miscellaneous Data									
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 1

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA - END OF QUARTER VIEW

Row	Classification	Month 1	Month 2	Month 3
	(a)	(b)	(c)	(d)
	COMMON LINE DEMAND-MOU			
	Premium:			
2010	Originating			
2020	Terminating			
	Non-Premium:			
2030	Originating			
2040	Terminating			
	SWITCHED TRAFFIC SENS. DEMAND-MOU			
2050	Premium			
2060	Non-Premium			

QUARTERLY DATA

Row	Classification	Quarter x
	(aa)	(ab)
	COMMON LINE DEMAND	
2090	Single Line Business C. P. T.	
2100	Residence CPT Lifeline	
2110	Residence CPT Non-Lifeline	
2120	Multiline Business	
2130	Centrex Co and CTX Like Lines	
2140	Special Access Lines Subject to Surcharge	
2150	Total Billable Access Lines	

Table I - ROW INSTRUCTIONS

Each row is an element related to a study area's revenue or revenue requirement.

Row	Item Description
	Revenues
1010.	Basic Local Service - The total of accounts 5001 through 5060.
1020.	Network Access Services - The total of accounts 5081 through 5084.
1030.	Toll Network Services - The total of accounts 5110 and 5121 through 5160, exclusive of account 5129.
1040.	Miscellaneous - The total of accounts 5230 through 5250, 5261 through 5264, 5270 and 5280. Prior to April 1, 1989, account 7991 shall be included instead of account 5280.
1050.	Settlements - The total of accounts 5069, 5129, 5169 and 5269. Carriers which do not retain the Class A accounts throughout separations and access reporting will include these amounts in the Class B accounts reported on rows 1020, 1030 and 1040.
1060.	Uncollectibles - The total of accounts 5301 and 5302.
1090.	Net Revenues - The total of rows 1010 through 1050 less row 1060.
	Expenses
1110.	Equal Access - This amount is equal to the total of all amounts that have been removed from the primary expense accounts pursuant to Section 36.421. Such expenses include only those expenses which are directly related to the provision of equal access.
1120.	Plant Specific - The total of accounts 6112 through 6116, 6121 through 6124, 6211 through 6220, 6231, 6232, 6311 through 6362, and 6411 through 6441.
1130.	Plant Non-Specific - The total of accounts 6511, 6512 and 6531 through 6535.
1140.	Customer Operations Marketing - The total of accounts 6611 through 6613.
1150.	Customer Operations Services - The total of accounts 6621 through 6623.
1160.	Corporate Operations - The total of accounts 6711, 6712, 6721 through 6728 and 6790.
1170.	Access - The balance of account 6540.
1180.	Depreciation/Amortization - The total of accounts 6561 through 6565.
1185.	FCC Expense Adjustment - This amount shall contain the net of: (1) expense and other tax items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) expense and other tax items included above which the Commission has expressly excluded for ratemaking purposes.
1190.	Total Operating Expenses - The net of lines 1110 through 1185.

Other Operating Items

1290. Other Operating Income/Losses - This amount shall contain the net of accounts 7110 through 7160, 7910 and 7990.

Non-operating Items

1310. Interest and Related Items - The balance of account 7520.
1320. Income Effects of Jurisdictional Ratemaking Differences (Net) - The balance of account 7910.
1330. Extraordinary Items - The total of accounts 7610 through 7640. Amounts excluded from ratemaking are removed in row 1360.
1340. Allowance for Funds Used During Construction - The balance of account 7340. Amounts excluded from ratemaking are removed in row 1360.
1350. Special Charges - The balance of account 7370.
1360. All Other Non-operating Items - The total of accounts 7310 through 7370.
1370. FCC Non-operating Adjustment - This amount shall contain the net of: (1) non-operating items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) non-operating items included above which the Commission has expressly excluded for ratemaking purposes.
1390. Total Non-operating Items - The net of lines 1310 through 1370.

Other Taxes

1410. State and Local Income - The total of accounts 7230 and the appropriate portion of 7250 for columns (b) through (g). Calculate this amount for the remaining columns pursuant to Section 36.412.
1420. Other State and Local - The total of accounts 7240 and the appropriate portion of account 7250 for columns (b) through (g). Calculate this amount for the remaining columns pursuant to Section 36.412.
1490. Total Other Taxes - The total of lines 1410 and 1420.

Federal Income Taxes

1510. Fixed Charges - The total of accounts 7510 through 7540. Amounts excluded from ratemaking are removed in row 1520.
1520. IRS Income Adjustment - This amount is the difference between taxable income reported for IRS purposes and the taxable income shown in accordance with Part 32.
1530. FCC Taxable Income Adjustment - This shall contain the net of: (1) taxable income not included above which the Commission has expressly allowed for ratemaking purposes; and (2) taxable income included above which the Commission has expressly excluded for ratemaking purposes.
1540. Investment Tax Credit Amortization - Enter the balance of account 7210 in columns (b) and (c). Enter the balance of account 7210 amortized during the reporting period in the remaining columns.

1550. FCC Investment Tax Credit Adjustment - This shall contain the net of: (1) ITC not included above which the Commission has expressly allowed for ratemaking purposes; and (2) the ITC included above which the Commission has expressly excluded for ratemaking purposes.

1590. Net Federal Income Taxes - The applicable total of lines 1510 through 1550. (For column (b), enter the total of accounts 7220 and the appropriate portion of 7250. For column (c) enter the amount calculated pursuant to the reporting carrier's Cost Allocation Manual. For the remaining columns, calculate this amount pursuant to Section 36.412.)

Plant-in-Service

1610. Equal Access Investment - This amount is equal to the total of all amounts that have been removed from the primary investment accounts pursuant to Section 36.191. Such investment includes only that investment which is directly related to the provision of equal access.

1620. Support Plant - The total of accounts 2111 through 2124.

1630. Operator Systems Equipment - The balance of account 2220.

1640. Central Office Equipment-Switching - The total of accounts 2211 through 2215.

1650. Central Office Equipment-Transmission - The total of accounts 2231 and 2232.

1660. Cable and Wire Facilities - The total of accounts 2411 through 2441.

1670. Information Origination/Termination Equipment - The total of accounts 2311 through 2362.

1680. Amortizable Assets - The total of accounts 2681, 2682 and 2690.

1690. Total Plant - The total of lines 1610 through 1680.

Other Investments

1710. Property Held for Future Telecommunications Use - The balance of account 2002.

1720. Telecommunications Plant Under Construction - The total of accounts 2003 and 2004.

1730. Plant Acquisition Adjustment - The balance of account 2005.

1740. Investment in Nonaffiliated Companies - The balance of account 1402. The amount directly related to Class B Rural Telephone Bank Stock shall be included in the rate base. Amounts excluded from ratemaking are removed in row 1780.

1750. Other Deferred Charges - The balance of accounts 1438 and 1439. Amounts excluded from ratemaking are removed in row 1780.

1760. Inventories - The balance of account 1220.

1770. Cash Working Capital - This amount equals that portion of investment required to meet current expenses. The calculation of this amount shall take into account revenue and expense items which are received or paid for before the service is rendered and expense items received or disbursed after the service is rendered. This amount must be developed from a lead-lag study pursuant to CC Docket 86-497.

1780. FCC Investment Adjustment - This amount shall contain the net of: (1) investment items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) investment items included above which the Commission has expressly excluded for ratemaking purposes.

1790. Total Other Investments - The net of lines 1710 through 1780.

Reserves

1810. Other Jurisdictional Assets-Net - The balance of Account 1500.

1820. Accumulated Depreciation - The total of accounts 3100 and 3200.

1830. Accumulated Amortization - The total of accounts 3410, 3420, 3500 and 3600.

1840. Deferred Federal Income Taxes - The total of accounts 4100 and 4340.

1850. Customer Deposits - The total of accounts 4030 and 4040. Amounts excluded from ratemaking are removed in row 1880.

1860. Other Accrued Liabilities - The balance of account 4120. Amounts excluded from ratemaking are removed in row 1880.

1870. Other Deferred Credits - The balance of account 4360. Amounts excluded from ratemaking are removed in row 1880.

1880. All Other Reserve Items - The balance of account 4370. Amounts excluded from ratemaking are removed in row 1880.

1885. FCC Reserve Adjustment - This amount shall contain the net of: (1) reserve items not included above which the Commission has expressly included for ratemaking purposes; and (2) reserve items included above which the Commission has expressly excluded for ratemaking purposes.

1890. Total Reserves - The net of lines 1810 through 1885.

Return Data

1910. Average Net Investment - This amount shall be calculated by dividing the sum of the average net investment for each month in the reporting period by the number of months in the reporting period.

1915. Net Return - This amount is line 1090 less lines 1190, 1290, 1390, 1490 and 1590.

1920. Rate of Return - Line 1915 divided by line 1910, multiplied by 400.

1925. FCC Ordered Refund - This amount should be developed in accordance with CC Docket 84-800, Phase I.

1930. Net Return Including FCC Refund - The total of lines 1915 and 1925.

1935. Rate of Return Including FCC Refund - Line 1930 divided by line 1910, multiplied by 400.

Miscellaneous Data

1950. Lifeline Adjustment - Enter this amount pursuant to Part 36.701. For the first quarter of 1989, this amount is also included on row 1110.

1960. Universal Service Fund - Carriers with higher than average non-traffic-sensitive loop costs must report their interstate allocation, as reported to NECA for this reporting period, on this line.

1970. Common Line Support-Long Term - Enter the amount of long term support submitted to NECA pursuant to Part 69.112(a). This item is a negative amount.

1980. Common Line Support-Transitional - Enter the amount of transitional support received (positive amount) or disbursed (negative amount) pursuant to Part 69.112(b).

TABLE I - COLUMN DESCRIPTIONS

Each column is a cost category, access element, or summary thereof, specified in the Commission's Rules. Columns (b) through (e) shall be reported as booked. The remaining columns shall be reported as adjusted.

Column	Description
b.	Total - This column reflects the operating results for each of the rows itemized in this report, and includes all regulated and nonregulated company operations for each row. These amounts are represented prior to separation between state and interstate jurisdictions.
c.	Nonregulated - This column reflects the amount of each row pertaining to nonregulated activities in compliance with Docket 86-111.
d.	SNFA and Intra-company Adjustments - This column reflects adjustments made to each row for costs related to shared network facility arrangements and intra-company subsidiary contracts.
e.	All Other Adjustments - This column reflects all remaining adjustments such as: prior period adjustments, accounting adjustments, and the differences between end-of-period and averaged balances for investments and reserves, necessary to arrive at the amount subject to separation.
f.	Subject to Separations - This column reflects that portion of each row that must be allocated between state and interstate jurisdictions pursuant to Part 36 of the Commission's Rules. Column (b) less columns (c), (d) and (e).
g.	State - This column reflects that portion of each row that is allocated to the state jurisdiction for which this schedule is being filed, pursuant to Part 36 of the Commission's Rules. The cost of detariffed CPE shall be entered in this column pursuant to Part 36.142.
h.	Interstate - This column reflects that portion of each row that is allocated to the interstate jurisdiction for which this schedule is being filed, pursuant to Part 36 of the Commission's Rules.
	Common Line - These columns reflect those amounts that are assigned to the common line access element pursuant to Part 69 of the Commission's Rules. These costs are recovered through Subscriber Line Charges and a carrier common line charge assessed upon all interexchange carriers who use local exchange common line facilities for the provision of interstate or foreign telecommunications services.

i. Pay - This column reflects that portion of each row applicable to Pay Telephone Common Line Access charges pursuant to Part 69 of the Commission's Rules.

j. Inside Wire - This column reflects that portion of each row applicable to Common Line Access charges associated with inside wire pursuant to Part 69 of the Commission's Rules.

k. Base Factor Portion (BFP) - This column reflects that portion of Common Line Access charges not assigned to Pay, Inside Wire or CPE pursuant to Part 69 of the Commission's Rules

l. Customer Premises Equipment (CPE) - This column reflects that portion of each row assigned to the CPE Common Line Access charges pursuant to Part 69 of the Commission's Rules.

m. Total Common Line - The total of columns (i) through (l).

Traffic Sensitive - Traffic Sensitive plant is engineered to handle anticipated volumes of calls. These columns reflect those amounts that are assigned to the Traffic Sensitive Access elements and subelements pursuant to Part 69 of the Commission's Rules.

n. Switching - This column reflects that portion of each row associated with connection of toll lines to toll lines, or toll lines to local central offices, exclusive of equal access costs if the exchange carrier has a separate equal access rate element. The amounts entered in this column are applicable to the Local Switching Access element pursuant to Part 69 of the Commission's Rules.

o. Equal Access - This column includes only initial incremental expenditures for hardware and other equipment, and initial incremental presubscription costs related to the provision of equal access which would not be required absent the provision of equal access. This column applies to only those carriers having a separate equal access rate element and reflects only that portion of each applicable row assigned to the Equal Access element pursuant to Part 69 of the Commission's Rules.

p. Transport - This column reflects that portion of each line item applicable to charges assessed upon all interexchange carriers who use switching or transport facilities that are apportioned to the transport element or elements for purposes of apportioning net investment. The amounts entered in this column are assigned to the Transport Access element pursuant to Part 69 of the Commission's Rules.

q. Information - This column reflects that portion of each row applicable to charges assessed upon all interexchange carriers who are connected to assistance boards through interexchange directory assistance trunks. The amounts entered in this column are assigned to the Information Access element pursuant to Part 69 of the Commission's Rules.

r. Total Traffic Sensitive - The total of columns (n) through (q).

s. Special Access - This column reflects that portion of each row applicable to the total of all sub-elements that have been established for the use of equipment or facilities assigned to the Special Access element for purposes of apportioning net investment. The amounts entered in this column are assigned to the Special Access element pursuant to Part 69 of the Commission's Rules.

t. Total Access - The total of columns (m), (r) and (s).

u. Billing and Collection - This column reflects that portion of each row applicable to Billing and Collection services pursuant to Part 69 of the Commission's Rules.

v. Interexchange (IX) - This column reflects that portion of each row applicable to Interexchange services pursuant to Part 69 of the Commission's Rules.

TABLE II - DEMAND ANALYSIS TABLE

DEFINITIONS

Originating minutes of use (MOU) is a measurement of traffic on originating MTS and MTS-like common lines.

Terminating MOU is a measurement of traffic on terminating MTS and MTS-like, originating 800, terminating outWATS, originating open-end-FX and terminating open-end-FX common lines.

Premium carrier common line (CCL) MOU is a measurement of Feature Group A (FGA) and Feature Group B (FGB) traffic originating from or terminating at offices converted to equal access, plus all Feature Group C (FGC), Feature Group D (FGD), and interstate/intraLATA MOU, excluding closed-end WATS and WATS type MOU.

Non-Premium CCL MOU is a measurement of FGA and FGB access MOU originating and/or terminating at offices not converted to equal access.

Rows 2010 through 2060 of this table should contain monthly details of quarterly data. Rows 2090 through 2150 should be reported as of the end of the quarter.

Pages 13 and 14 are Table II instructions for the first quarter of 1989.
Pages 15 and 16 are Table II instructions for all ensuing quarters.

FIRST QUARTER 1989

MONTHLY DATA - END OF QUARTER VIEW

Row	DESCRIPTION
2010.	Originating Premium CCL MOU is calculated by dividing the originating premium CCL revenue reported to the pool by the originating premium CCL rate.
2020.	Terminating Premium CCL MOU is calculated by dividing the terminating premium CCL revenue reported to the pool by the terminating premium CCL rate.
2030.	Originating Non-Premium CCL MOU is calculated by dividing the originating Non-Premium CCL revenues reported to the pool by the product of the originating premium rate and .45.
2040.	Terminating Non-Premium CCL MOU is calculated by dividing the terminating Non-Premium CCL revenues reported to the pool by the product of the terminating premium CCL rate and .45.

Row	DESCRIPTION
2050.	Total premium traffic sensitive MOU is calculated by dividing adjusted premium line termination revenues by the line termination rate.
2060.	Total Non-Premium traffic sensitive MOU is calculated by dividing the adjusted Non-Premium traffic sensitive line termination revenues by the product of the line termination rate and .45.

QUARTERLY DATA

2090.	Single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units". A CPT is a line termination at the customer premises, rather than at the central office.
2100.	Residence lifeline CPTs for which the interstate subscriber line charge is reduced or waived. The decision to implement a lifeline plan is left to the individual state commission.
2110.	Residence non-lifeline CPTs subject to the residence interstate subscriber line charge, excluding lifeline CPTs.
2120.	Multiline business CPTs subject to the multiline business interstate subscriber line charge including multiline semi-public lines, PBX trunks, Centrex CU trunks, hotel/motel LD trunks and Centrex CO lines ordered after July 27, 1983.
2130.	Centrex CO and CTX CO-like lines in service or ordered as of July 27, 1983.
2140.	Special access lines subject to a $25 surcharge, including WATS lines, as appropriate, after June 1, 1986.
2150.	Total billable access lines is the sum of rows 2090 through 2140.

ALL ENSUING QUARTERS

MONTHLY DATA - END OF QUARTER VIEW

Row	DESCRIPTION
2010.	Originating Premium CCL MOU are calculated by dividing the originating premium CCL revenue reported to the pool by the originating premium CCL rate, calculated pursuant to Section 69.105.
2020.	Terminating Premium CCL MOU are calculated by dividing the terminating premium CCL revenue reported to the pool by the terminating premium CCL rate, calculated pursuant to Section 69.105.
2030.	Originating Non-Premium CCL MOU are calculated by dividing the originating Non-Premium CCL revenues reported to the pool by the product of the originating premium rate and .45, pursuant to Section 69.113.
2040.	Terminating Non-Premium CCL MOU are calculated by dividing the terminating Non-Premium CCL revenues reported to the pool by the product of the terminating premium CCL rate and .45, pursuant to Section 69.113.
2050.	Total premium traffic sensitive MOU are calculated by dividing adjusted premium line termination revenues by the line termination rate, calculated pursuant to Section 69.205.
2060.	Total Non-Premium traffic sensitive MOU are calculated by dividing the adjusted Non-Premium traffic sensitive line termination revenues by the product of the line termination rate and .45, calculated pursuant to Section 69.113.

QUARTERLY DATA

2090.	Single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units". A CPT is a line termination at the customer premises, rather than at the central office. Enter end of quarter in service amounts.
2100.	Residence lifeline CPTs for which the interstate subscriber line charge is reduced or waived. The decision to implement a lifeline plan is left to the individual state commission. Enter end of quarter in service amounts.

2110. Residence non-lifeline CPTs subject to the residence interstate subscriber line charge, excluding lifeline CPTs. Enter end of quarter in service amounts.

2120. Multiline business CPTs subject to the multiline business interstate subscriber line charge including multiline semi-public lines, PBX trunks, Centrex CU trunks, hotel/motel LD trunks and Centrex CO lines ordered after July 27, 1983. Enter end of quarter in service amounts.

2130. Centrex CO and CTX CO-like lines in service or ordered as of July 27, 1983. Enter end of quarter in service amounts.

2140. Special access lines subject to a $25 surcharge, including WATS lines, as appropriate, after June 1, 1986. Enter end of quarter in service amounts.

2150. Total billable access lines is the sum of rows 2090 through 2140.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has seven components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letter "Q".
   d. the number of the quarter which is covered by the data.
   e. a decimal point.
   f. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   g. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission.

   For example, the file name for the Confidential Version of the initial quarterly report data file to be submitted by Illinois Bell to cover the first quarter of calendar year 1989, would be LBIL89Q1.C01:

LBIL	COSA for Illinois Bell
89	Data for calendar year 1989
Q	Quarterly Report data file
1	Data for the first quarter
.	decimal point
C	Confidential version
01	First submission of this quarter's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (particular attention is called to the revenue item Uncollectibles; this figure, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g. use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for rate of return data fields (Rate of Return and Rate of Return including Refund), which will include a decimal point but not a percent sign.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in the Rate of Return field, -99999 would be entered as -99999.00

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 decimal places.

Example: 12 2/3 percent should be entered as 12.67

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 18 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 73 Type R2 records, followed by six Type M1 records, followed by seven Type Q1 records, followed by one or more Type C2 records, followed by zero or more Type F1 records, followed by zero or more Type E2 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type R2	Revenue Requirement Data Record	73 Type R2 records per file. One record for each of the 73 rows shown on Pages 2, 3 & 5 - 9 of the accompanying Report Definition. Each record contains data values for that particular revenue or revenue requirement element broken out by the cost categories and access elements shown on Pages 2, 3 & 10 - 12 of the Report Definition. See pages 7 - 9 for record layout.
Record Type M1	Demand Analysis Monthly Data Record	Six Type M1 records per file. One record for each of the 6 rows of monthly demand analysis data (end of quarter view) shown on Pages 4 & 13 - 16 of the accompanying Report Definition. Each record contains monthly details of minutes of use data. See page 10 for record layout.

Record Type Q1	Demand Analysis Quarterly Data Record	Seven Type Q1 records per file. One record for each of the 7 rows of quarterly demand analysis data shown on Pages 4 and 14 - 16 of the accompanying Report Definition. Each record contains quarterly minutes of use data and access line data. See page 11 for record layout.
Record Type C2	Confidential Treatment Record	One or more Type C2 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 12 & 13 for record layout.
Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See page 14 & 15 for record layout.
Record Type E2	Erratum Record	Zero Type E2 records in the first submission of a quarter's data. One or more Type E2 records per file in revisions filed to correct that quarter's submission. Contains information to identify the data which was corrected in this submission. See pages 16 & 17 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 18 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL89Q1.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1989	33-36	The year covered by the data.
6	Quarter #	1	38	The quarter number covered by the data. 1 for January to March 2 for April to June 3 for July to September 4 for October to December
7	Data Entry Date	19890615	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5         . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789012345678  . . . . .    Ruler line
```

Sample record:

```
1001,"LBIL","H1","LBIL89Q1.C01",1989,1,19890615,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-01"	18-35	Always contains "FCC REPORT 43-01" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1989 to Mar 1989"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                    1         1
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample record:
1002,"LBIL","L1","FCC REPORT 43-01","Illinois Bell                ","Illinois            ","Jan 1989 to Mar 1989","XQ"
```

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1009	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"R2"	13-16	Always contains the letter R capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Row Number	1090	18-21	Row number as shown on the attached Paper Report Specifications. Valid range: 1010 to 1980 Format: right justified and space filled.
5	Column (b) data	81728 -OR- 12.00	23-31	This field contains the data corresponding to column (b) as shown on Pages 3 thru 23 of the attached Paper Report Specs. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows to indicate that the data is not available. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	33-41	Column (c) data Format: see Field 5 above.
7	Column (d) data	2716	43-51	Column (d) data Format: see Field 5 above.
8	Column (e) data	2716	53-61	Column (e) data Format: see Field 5 above.
9	Column (f) data	70864	63-71	Column (f) data Format: see Field 5 above.
10	Column (g) data	5432	73-81	Column (g) data Format: see Field 5 above.
11	Column (h) data	65432	83-91	Column (h) data Format: see Field 5 above.
12	Column (i) data	1358	93-101	Column (i) data Format: see Field 5 above.

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
13	Column (j) data	1358	103-111	Column (j) data Format: see Field 5 above.
14	Column (k) data	2716	113-121	Column (k) data Format: see Field 5 above.
15	Column (l) data	-99999	123-131	Column (l) data Format: see Field 5 above.
16	Column (m) data	5432	133-141	Column (m) data Format: see Field 5 above.
17	Column (n) data	2716	143-151	Column (n) data Format: see Field 5 above.
18	Column (o) data	2716	153-161	Column (o) data Format: see Field 5 above.
19	Column (p) data	5432	163-171	Column (p) data Format: see Field 5 above.
20	Column (q) data	5432	173-181	Column (q) data Format: see Field 5 above.
21	Column (r) data	16296	183-191	Column (r) data Format: see Field 5 above.
22	Column (s) data	5432	193-201	Column (s) data Format: see Field 5 above.
23	Column (t) data	27160	203-211	Column (t) data Format: see Field 5 above.
24	Column (u) data	19136	213-221	Column (u) data Format: see Field 5 above.
25	Column (v) data	19136	223-231	Column (v) data Format: see Field 5 above.

RECORD TYPE R2 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
26	End of Record Code	"XQ"	233-236	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type R2, M1, Q1 and C2 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample record:
1009,"LBIL","R2",1090,    81728,    5432,     2716,     2716,     70864,    5432,     65432,
```

```
         1         1         1         1         1         1         1         1         1
9        0         1         2         3         4         5         6         7         8
345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Continuation of sample record:
     1358,     1358,     2716,    -99999,    5432,     2716,     2716,     5432,     5432,
```

```
1        1         2         2         2         2
8        9         0         1         2         3
345678901234567890123456789012345678901234567890123456
Continuation of sample record:
    16296,    5432,     27160,    19136,    19136,"XQ"
```

RECORD TYPE M1 - DEMAND ANALYSIS MONTHLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1076	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"M1"	13-16	Always contains the letter M capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2010	18-21	Row number as shown on Page 24 of the attached Paper Report Specifications. Valid range: 2010 to 2060 Format: right justified and space filled.
5	Data for the first month of the quarter	5432	23-31	This field contains the data corresponding to the first month of the quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Data for the second month of the quarter	5654	33-41	This field contains the data corresponding to the second month of the quarter. Format: see Field 5 above.
7	Data for the third month of the quarter	5876	43-51	This field contains the data corresponding to the third month of the quarter. Format: see Field 5 above.
8	End of Record Code	"XQ"	53-56	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type M1, Q1 and C2 records) containing footnote text to explain the specific circumstances.

```
          1         2         3         4         5
12345678901234567890123456789012345678901234567890123456
Sample record:
1076,"LBIL","M1",2010,     5432,     5654,     5876,"XQ"
```

RECORD TYPE Q1 - DEMAND ANALYSIS QUARTERLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1082	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"Q1"	13-16	Always contains the letter Q capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2090	18-21	Row number as shown on Page 24 of the attached Paper Report Specifications. Valid range: 2090 to 2150. Format: right justified and space filled.
5	Quarterly data	5432	23-31	This field contains the data corresponding to the entire quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	33-36	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type Q2, and C2 records) containing footnote text to explain the specific circumstances.

```
         1         2         3
12345678901234567890123456789012345
Sample record:
1082,"LBIL","Q1",2090,     5432,"XQ"
```

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1089	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C2"	13-16	Always contains the letter C capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1006	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s), an entire table, or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested, then enter " ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the row which contains the confidential data as identified in the attached Paper Report Specs. If the request is for the entire column(s), an entire table, or the entire submission, enter 9999. If no confidential treatment is being requested then use 0. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the attached Paper Report Specs. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"G "	40-43	.....
9	Third Column Label	"Q "	45-48	Fields 8 thru 26 are similar to Field 7 and are used when the request is for the same row and more than one column.
.				
.				
.				
.				
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".
27	End of Record Code	"XQ"	135-138	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1089,"LBIL","C2",1006,"I   ",1040,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1090,"LBIL","C2",1009,"I   ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1091,"LBIL","C2",9999,"I   ",9999,"U ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1092,"LBIL","C2",1076,"II  ",2010,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",

                                                                - OR -

1089,"LBIL","C2",   0,"    ",   0,"  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1
0         1         2         3
01234567890123456789012345678901234567890123456789
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","XQ"

              - OR -

"  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1093	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1006	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table or the entire submission, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the row which contains the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text " (spaces until pos. 102)	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1093,"LBIL","F1",1006,"I   ",1040,"C ", 1, 1,"Footnote text for footnote 1                                ","XQ"
1094,"LBIL","F1",1006,"I   ",1040,"C ", 1, 2,"continuation text for footnote 1                           ","XQ"
1095,"LBIL","F1",1006,"I   ",1040,"C ", 1, 3,"last line of footnote 1                                    ","XQ"
1096,"LBIL","F1",1029,"I   ",1410,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table I row 1410    ","XQ"
1097,"LBIL","F1",9999,"I   ",9999,"G ", 3, 1,"Footnote 3 pertains to all rows of Table I column G        ","XQ"
1098,"LBIL","F1",1076,"II  ",2010,"B ", 4, 1,"Footnote 4 pertains to Table II row 2010 column B          ","XQ"
```

RECORD TYPE E2 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1099	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E2"	13-16	Always contains the letter E capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1006	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If the entire submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the attached Paper Report Specifications. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the attached Paper Report Specifications. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE E2 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"E "	40-43	.....
9	Third Column Label	"G "	45-48	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".
27	Footnote Number	1	135-136	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	138-141	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1099,"LBIL","E2",1006,"I   ",1040,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1100,"LBIL","E2",1009,"I   ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1101,"LBIL","E2",1029,"I   ",1410,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1102,"LBIL","E2",9999,"I   ",9999,"G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1103,"LBIL","E2",1076,"II  ",2010,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1         1
0         1         2         3         4
01234567890123456789012345678901234567890
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1104	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1104,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., the revenue item Uncollectibles, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 places. Example: 12 2/3 percent should be entered as 12.67

E. Page Layouts

The twenty-six page layouts are illustrated on pages 3 through 28. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Pages 1.1 through 1.7.	3 - 9
Table I Pages 2.1 through 2.7.	10 - 16
Table I Pages 3.1 through 3.7.	17 - 23
Table II Page 1.	24
The Confidential Treatment Table (at least one page and as many pages as needed).	25
The Footnote Table (at least one page and as many pages as needed).	26
The Erratum Table (for submission number 2 or higher, as many pages as needed).	27
The Certification Page.	28

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.1 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total	Nonreg.	SNFA and Intra-co. Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Basic Local Service		N/A		
1020	Network Access Services		N/A		
1030	Toll Network Services		N/A		
1040	Miscellaneous				
1050	Settlements		N/A		
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Equal Access		N/A	N/A	
1120	Plant Specific				
1130	Plant Non-Specific				
1140	Customer Operations Marketing				
1150	Customer Operations Services				
1160	Corporate Operations				
1170	Access		N/A		
1180	Depreciation/Amortization				
1185	FCC Expense Adjustment	N/A	N/A	N/A	
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Interest and Related Items				
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	
1330	Extraordinary Items				
1340	AFUDC				
1350	Special Charges				
1360	All Other Non-operating Items				
1370	FCC Non-operating Adjustment	N/A	N/A	N/A	
1390	Total Non-operating Items				

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SUBMISSION x
TABLE I
PAGE 1.2 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	All Other Adjustments	Subject to Separations	State	
	(a)	(e)	(f)	(g)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Basic Local Service				
1020	Network Access Services				
1030	Toll Network Services				
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Equal Access	N/A			
1120	Plant Specific				
1130	Plant Non-Specific				
1140	Customer Operations Marketing				
1150	Customer Operations Services				
1160	Corporate Operations				
1170	Access				
1180	Depreciation/Amortization				
1185	FCC Expense Adjustment	N/A	N/A	N/A	
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Interest and Related Items				
1320	Inc Effect/Jurisdiction Differenc	N/A			
1330	Extraordinary Items				
1340	AFUDC				
1350	Special Charges				
1360	All Other Non-operating Items				
1370	FCC Non-operating Adjustment	N/A	N/A	N/A	
1390	Total Non-operating Items				

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COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.3 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Interstate	Common Line	
			Pay	Inside Wire
	(a)	(h)	(i)	(j)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Revenues			
1010	Basic Local Service		N/A	N/A
1020	Network Access Services			
1030	Toll Network Services		N/A	N/A
1040	Miscellaneous			
1050	Settlements			
1060	Uncollectibles			
1090	Net Revenues			
	Expenses			
1110	Equal Access		N/A	N/A
1120	Plant Specific			
1130	Plant Non-Specific			
1140	Customer Operations Marketing			
1150	Customer Operations Services			
1160	Corporate Operations			
1170	Access	N/A	N/A	N/A
1180	Depreciation/Amortization			
1185	FCC Expense Adjustment			
1190	Total Operating Expenses			
	Other Operating Items			
1290	Other Operating Income/Losses			
	Non-operating Items			
1310	Interest and Related Items			
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A
1330	Extraordinary Items			
1340	AFUDC			
1350	Special Charges			
1360	All Other Non-operating Items			
1370	FCC Non-operating Adjustment			
1390	Total Non-operating Items			

... Ruler Line

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COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.4 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Common Line		
Row	Classification	BFP	CPE	Total
	(a)	(k)	(l)	(m)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Revenues			
1010	Basic Local Service	N/A	N/A	N/A
1020	Network Access Services		N/A	
1030	Toll Network Services	N/A	N/A	N/A
1040	Miscellaneous		N/A	
1050	Settlements		N/A	
1060	Uncollectibles		N/A	
1090	Net Revenues		N/A	
	Expenses			
1110	Equal Access	N/A	N/A	N/A
1120	Plant Specific		N/A	
1130	Plant Non-Specific		N/A	
1140	Customer Operations Marketing		N/A	
1150	Customer Operations Services		N/A	
1160	Corporate Operations		N/A	
1170	Access	N/A	N/A	N/A
1180	Depreciation/Amortization		N/A	
1185	FCC Expense Adjustment		N/A	
1190	Total Operating Expenses		N/A	
	Other Operating Items			
1290	Other Operating Income/Losses		N/A	
	Non-operating Items			
1310	Interest and Related Items		N/A	
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A
1330	Extraordinary Items		N/A	
1340	AFUDC		N/A	
1350	Special Charges		N/A	
1360	All Other Non-operating Items		N/A	
1370	FCC Non-operating Adjustment		N/A	
1390	Total Non-operating Items		N/A	

... Ruler Line

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COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.5 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive			
Row	Classification	Switching	EqualAccess	Transport	
	(a)	(n)	(o)	(p)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Basic Local Service	N/A	N/A	N/A	
1020	Network Access Services				
1030	Toll Network Services	N/A	N/A	N/A	
1040	Miscellaneous		N/A		
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Equal Access			N/A	
1120	Plant Specific		N/A		
1130	Plant Non-Specific				
1140	Customer Operations Marketing				
1150	Customer Operations Services				
1160	Corporate Operations				
1170	Access	N/A	N/A	N/A	
1180	Depreciation/Amortization				
1185	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Interest and Related Items				
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	
1330	Extraordinary Items				
1340	AFUDC				
1350	Special Charges				
1360	All Other Non-operating Items				
1370	FCC Non-operating Adjustment				
1390	Total Non-operating Items				

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PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.6 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive Information	Traffic Sensitive Total	Special Access	
	(a)	(q)	(r)	(s)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Basic Local Service	N/A	N/A	N/A	
1020	Network Access Services				
1030	Toll Network Services	N/A	N/A	N/A	
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Equal Access	N/A		N/A	
1120	Plant Specific				
1130	Plant Non-Specific				
1140	Customer Operations Marketing				
1150	Customer Operations Services				
1160	Corporate Operations				
1170	Access	N/A	N/A	N/A	
1180	Depreciation/Amortization				
1185	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Interest and Related ITems				
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	
1330	Extraordinary Items				
1340	AFUDC				
1350	Special Charges				
1360	All Other Non-operating Items				
1370	FCC Non-operating Adjustment				
1390	Total Non-operating Items				

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PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 1.7 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total Access	Billing & Collection	IX	
	(a)	(t)	(u)	(v)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
1010	Basic Local Service	N/A	N/A	N/A	
1020	Network Access Services		N/A	N/A	
1030	Toll Network Services	N/A	N/A		
1040	Miscellaneous				
1050	Settlements				
1060	Uncollectibles				
1090	Net Revenues				
	Expenses				
1110	Equal Access		N/A	N/A	
1120	Plant Specific				
1130	Plant Non-Specific				
1140	Customer Operations Marketing				
1150	Customer Operations Services				
1160	Corporate Operations				
1170	Access	N/A	N/A		
1180	Depreciation/Amortization				
1185	FCC Expense Adjustment				
1190	Total Operating Expenses				
	Other Operating Items				
1290	Other Operating Income/Losses				
	Non-operating Items				
1310	Interest and Related Items				
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	
1330	Extraordinary Items				
1340	AFUDC				
1350	Special Charges				
1360	All Other Non-operating Items				
1370	FCC Non-operating Adjustment				
1390	Total Non-operating Items				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total	Nonreg.	SNFA and Intra-co. Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	Federal Income Taxes				
1510	Fixed Charges				
1520	IRS Income Adjustment		N/A		
1530	FCC Taxable Income Adjustment	N/A	N/A		
1540	ITC Amortization				
1550	FCC ITC Adjustment	N/A	N/A	N/A	
1590	Net FIT			N/A	
	Plant-in-Service				
1610	Equal Access Investment		N/A	N/A	
1620	Support Plant				
1630	Operator Systems Equipment				
1640	COE-Switching				
1650	COE-Transmission				
1660	Cable and Wire Facilities				
1670	IOT Equipment				
1680	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use				
1720	Plant Under Construction				
1730	Plant Acquisition Adjustment	N/A	N/A	N/A	
1740	Investment in Nonaffiliated Cos				
1750	Other Deferred Charges				
1760	Inventories				
1770	Cash Working Capital	N/A	N/A	N/A	
1780	FCC Investment Adjustment	N/A	N/A	N/A	
1790	Total Other Investments				

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COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 2.2 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	All Other Adjustments	Subject to Separations	State	
	(a)	(e)	(f)	(g)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	Federal Income Taxes				
1510	Fixed Charges				
1520	IRS Income Adjustment				
1530	FCC Taxable Income Adjustment		N/A	N/A	
1540	ITC Amortization				
1550	FCC ITC Adjustment	N/A	N/A	N/A	
1590	Net FIT	N/A			
	Plant-in-Service				
1610	Equal Access Investment	N/A			
1620	Support Plant				
1630	Operator Systems Equipment				
1640	COE-Switching				
1650	COE-Transmission				
1660	Cable and Wire Facilities				
1670	IOT Equipment				
1680	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use				
1720	Plant Under Construction				
1730	Plant Acquisition Adjustment				
1740	Investment in Nonaffiliated Cos				
1750	Other Deferred Charges				
1760	Inventories				
1770	Cash Working Capital	N/A	N/A	N/A	
1780	FCC Investment Adjustment	N/A	N/A	N/A	
1790	Total Other Investments				

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COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 2.3 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Interstate	Common Line	
			Pay	Inside Wire
	(a)	(h)	(i)	(j)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Other Taxes			
1410	State and Local Income			
1420	Other State and Local			
1490	Total Other Taxes			
	Federal Income Taxes			
1510	Fixed Charges			
1520	IRS Income Adjustment			
1530	FCC Taxable Income Adjustment			
1540	ITC Amortization			
1550	FCC ITC Adjustment			
1590	Net FIT			
	Plant-in-Service			
1610	Equal Access Investment		N/A	N/A
1620	Support Plant			
1630	Operator Systems Equipment		N/A	N/A
1640	COE-Switching		N/A	N/A
1650	COE-Transmission			N/A
1660	Cable and Wire Facilities			N/A
1670	IOT Equipment			
1680	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			
1740	Investment in Nonaffiliated Cos			
1750	Other Deferred Charges			
1760	Inventories			
1770	Cash Working Capital			
1780	FCC Investment Adjustment			
1790	Total Other Investments			

Line ... Ruler Line

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COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 2.4 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Common Line			
Row	Classification	BFP	CPE	Total	
	(a)	(k)	(l)	(m)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Taxes				
1410	State and Local Income		N/A		
1420	Other State and Local		N/A		
1490	Total Other Taxes		N/A		
	Federal Income Taxes				
1510	Fixed Charges		N/A		
1520	IRS Income Adjustment		N/A		
1530	FCC Taxable Income Adjustment		N/A		
1540	ITC Amortization		N/A		
1550	FCC ITC Adjustment		N/A		
1590	Net FIT		N/A		
	Plant-in-Service				
1610	Equal Access Investment	N/A	N/A	N/A	
1620	Support Plant		N/A		
1630	Operator Systems Equipment	N/A	N/A	N/A	
1640	COE-Switching	N/A	N/A	N/A	
1650	COE-Transmission		N/A		
1660	Cable and Wire Facilities		N/A		
1670	IOT Equipment		N/A		
1680	Amortizable Assets		N/A		
1690	Total Plant		N/A		
	Other Investments				
1710	Property Held for Future Use		N/A		
1720	Plant Under Construction		N/A		
1730	Plant Acquisition Adjustment		N/A		
1740	Investment in Nonaffiliated Cos		N/A		
1750	Other Deferred Charges		N/A		
1760	Inventories		N/A		
1770	Cash Working Capital		N/A		
1780	FCC Investment Adjustment		N/A		
1790	Total Other Investments		N/A		

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xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 2.5 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive			
Row	Classification	Switching	EqualAccess	Transport	
	(a)	(n)	(o)	(p)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	Federal Income Taxes				
1510	Fixed Charges				
1520	IRS Income Adjustment				
1530	FCC Taxable Income Adjustment				
1540	ITC Amortization				
1550	FCC ITC Adjustment				
1590	Net FIT				
	Plant-in-Service				
1610	Equal Access Equipment			N/A	
1620	Support Plant				
1630	Operator Systems Equipment		N/A		
1640	COE-Switching		N/A		
1650	COE-Transmission	N/A	N/A		
1660	Cable and Wire Facilities	N/A	N/A		
1670	IOT Equipment	N/A	N/A	N/A	
1680	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use		N/A		
1720	Plant Under Construction		N/A		
1730	Plant Acquisition Adjustment				
1740	Investment in Nonaffiliated Cos				
1750	Other Deferred Charges				
1760	Inventories				
1770	Cash Working Capital				
1780	FCC Investment Adjustment				
1790	Total Other Investments				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.6 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive		Special
		Information	Total	Access
	(a)	(q)	(r)	(s)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Other Taxes			
1410	State and Local Income			
1420	Other State and Local			
1490	Total Other Taxes			
	Federal Income Taxes			
1510	Fixed Charges			
1520	IRS Income Adjustment			
1530	FCC Taxable Income Adjustment			
1540	ITC Amortization			
1550	FCC ITC Adjustment			
1590	Net FIT			
	Plant-in-Service			
1610	Equal Access Equipment	N/A		N/A
1620	Support Plant			
1630	Operator Systems Equipment			N/A
1640	COE-Switching	N/A		
1650	COE-Transmission	N/A		
1660	Cable and Wire Facilities	N/A		
1670	IOT Equipment	N/A	N/A	
1680	Amortizable Assets			
1690	Total Plant			
	Other Investments			
1710	Property Held for Future Use			
1720	Plant Under Construction			
1730	Plant Acquisition Adjustment			
1740	Investment in Nonaffiliated Cos			
1750	Other Deferred Charges			
1760	Inventories			
1770	Cash Working Capital			
1780	FCC Investment Adjustment			
1790	Total Other Investments			

... Ruler Line

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.7 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total Access	Billing & Collection	IX	
	(a)	(t)	(u)	(v)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Taxes				
1410	State and Local Income				
1420	Other State and Local				
1490	Total Other Taxes				
	Federal Income Taxes				
1510	Fixed Charges				
1520	IRS Income Adjustment				
1530	FCC Taxable Income Adjustment				
1540	ITC Amortization				
1550	FCC ITC Adjustment				
1590	Net FIT				
	Plant-in-Service				
1610	Equal Access Investment		N/A	N/A	
1620	Support Plant				
1630	Operator Systems Equipment		N/A		
1640	COE-Switching		N/A		
1650	COE-Transmission		N/A		
1660	Cable and Wire Facilities		N/A		
1670	IOT Equipment		N/A		
1680	Amortizable Assets				
1690	Total Plant				
	Other Investments				
1710	Property Held for Future Use				
1720	Plant Under Construction				
1730	Plant Acquisition Adjustment				
1740	Investment in Nonaffilated Cos				
1750	Other Deferred Charges				
1760	Inventories				
1770	Cash Working Capital				
1780	FCC Investment Adjustment				
1790	Total Other Investments				

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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 3.1 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total	Nonreg.	SNFA and Intra-co. Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Reserves				
1810	Other Jurisdictional Assets-Net				
1820	Accumulated Depreciation				
1830	Accumulated Amortization				
1840	Deferred FIT				
1850	Customer Deposits				
1860	Other Accrued Liabilities				
1870	Other Deferred Credits				
1880	All Other Reserve Items				
1885	FCC Reserve Adjustment	N/A	N/A	N/A	
1890	Total Reserves				
	Return Data				
1910	Average Net Investment	N/A	N/A	N/A	
1915	Net Return	N/A	N/A	N/A	
1920	Rate of Return	N/A	N/A	N/A	
1925	FCC Ordered Refund	N/A	N/A	N/A	
1930	Net Return Including FCC Refund	N/A	N/A	N/A	
1935	Rate of Return (including refund)	N/A	N/A	N/A	
	Miscellaneous Data				
1950	Lifeline Adjustment	N/A	N/A	N/A	
1960	Universal Service Fund	N/A	N/A	N/A	
1970	Common Line Support-Long Term	N/A	N/A	N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 3.2 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	All Other Adjustments	Subject to Separations	State	
	(a)	(e)	(f)	(g)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Reserves				
1810	Other Jurisdictional Assets-Net				
1820	Accumulated Depreciation				
1830	Accumulated Amortization				
1840	Deferred FIT				
1850	Customer Deposits		N/A		
1860	Other Accrued Liabilities				
1870	Other Deferred Credits				
1880	All Other Reserve Items				
1885	FCC Reserve Adjustment	N/A	N/A	N/A	
1890	Total Reserves				
	Return Data				
1910	Average Net Investment	N/A	N/A	N/A	
1915	Net Return	N/A	N/A	N/A	
1920	Rate of Return	N/A	N/A	N/A	
1925	FCC Ordered Refund	N/A	N/A	N/A	
1930	Net Return Including FCC Refund	N/A	N/A	N/A	
1935	Rate of Return (including refund)	N/A	N/A	N/A	
	Miscellaneous Data				
1950	Lifeline Adjustment	N/A			
1960	Universal Service Fund	N/A			
1970	Common Line Support-Long Term	N/A	N/A	N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 3.3 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

			Common Line	
Row	Classification	Interstate	Pay	Inside Wire
	(a)	(h)	(i)	(j)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Reserves			
1810	Other Jurisdictional Assets-Net		N/A	N/A
1820	Accumulated Depreciation			
1830	Accumulated Amortization			
1840	Deferred FIT			
1850	Customer Deposits			
1860	Other Accrued Liabilities			
1870	Other Deferred Credits			
1880	All Other Reserve Items			
1885	FCC Reserve Adjustment			
1890	Total Reserves			
	Return Data			
1910	Average Net Investment			
1915	Net Return			
1920	Rate of Return			
1925	FCC Ordered Refund			
1930	Net Return Including FCC Refund			
1935	Rate of Return (including refund)			
	Miscellaneous Data			
1950	Lifeline Adjustment		N/A	N/A
1960	Universal Service Fund		N/A	N/A
1970	Common Line Support-Long Term		N/A	N/A
1980	Common Line Support-Transitional		N/A	N/A

... Ruler Line

If applicable:
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FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 3.4 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Common Line		
Row	Classification	BFP	CPE	Total
	(a)	(k)	(l)	(m)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Reserves			
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A
1820	Accumulated Depreciation		N/A	
1830	Accumulated Amortization		N/A	
1840	Deferred FIT		N/A	
1850	Customer Deposits		N/A	
1860	Other Accrued Liabilities		N/A	
1870	Other Deferred Credits		N/A	
1880	All Other Reserve Items		N/A	
1885	FCC Reserve Adjustment		N/A	
1890	Total Reserves		N/A	
	Return Data			
1910	Average Net Investment		N/A	
1915	Net Return		N/A	
1920	Rate of Return		N/A	
1925	FCC Ordered Refund		N/A	
1930	Net Return Including FCC Refund		N/A	
1935	Rate of Return (including refund)		N/A	
	Miscellaneous Data			
1950	Lifeline Adjustment	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A
1970	Common Line Support-Long Term		N/A	
1980	Common Line Support-Transitional		N/A	

Line ... Ruler Line

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ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 3.5 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive			
		Switching	EqualAccess	Transport	
	(a)	(n)	(o)	(p)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Reserves				
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A	
1820	Accumulated Depreciation				
1830	Accumulated Amortization				
1840	Deferred FIT		N/A		
1850	Customer Deposits				
1860	Other Accrued Liabilities				
1870	Other Deferred Credits				
1880	All Other Reserve Items				
1885	FCC Reserve Adjustment				
1890	Total Reserves				
	Return Data				
1910	Average Net Investment				
1915	Net Return				
1920	Rate of Return				
1925	FCC Ordered Refund				
1930	Net Return Including FCC Refund				
1935	Rate of Return (including refund)				
	Miscellaneous Data				
1950	Lifeline Adjustment	N/A	N/A	N/A	
1960	Universal Service Fund	N/A	N/A	N/A	
1970	Common Line Support-Long Term	N/A	N/A	N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	

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ARMIS QUARTERLY REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 3.6 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Traffic Sensitive Information	Traffic Sensitive Total	Special Access	
	(a)	(q)	(r)	(s)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Reserves				
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A	
1820	Accumulated Depreciation				
1830	Accumulated Amortization				
1840	Deferred FIT				
1850	Customer Deposits				
1860	Other Accrued Liabilities				
1870	Other Deferred Credits				
1880	All Other Reserve Items				
1885	FCC Reserve Adjustment				
1890	Total Reserves				
	Return Data				
1910	Average Net Investment				
1915	Net Return				
1920	Rate of Return				
1925	FCC Ordered Refund				
1930	Net Return Including FCC Refund				
1935	Rate of Return (including refund)				
	Miscellaneous Data				
1950	Lifeline Adjustment	N/A	N/A	N/A	
1960	Universal Service Fund	N/A	N/A	N/A	
1970	Common Line Support-Long Term	N/A	N/A	N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	

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Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 3.7 OF 3.7

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification	Total Access	Billing & Collection	IX	
	(a)	(t)	(u)	(v)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Reserves				
1810	Other Jurisdictional Assets-Net	N/A	N/A	N/A	
1820	Accumulated Depreciation				
1830	Accumulated Amortization				
1840	Deferred FIT				
1850	Customer Deposits				
1860	Other Accrued Liabilities				
1870	Other Deferred Credits				
1880	All Other Reserve Items				
1885	FCC Reserve Adjustment				
1890	Total Reserves				
	Return Data				
1910	Average Net Investment		N/A	N/A	
1915	Net Return		N/A	N/A	
1920	Rate of Return		N/A	N/A	
1925	FCC Ordered Refund		N/A	N/A	
1930	Net Return Including FCC Refund		N/A	N/A	
1935	Rate of Return (including refund)		N/A	N/A	
	Miscellaneous Data				
1950	Lifeline Adjustment	N/A	N/A	N/A	
1960	Universal Service Fund	N/A	N/A	N/A	
1970	Common Line Support-Long Term		N/A	N/A	
1980	Common Line Support-Transitional		N/A	N/A	

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ARMIS QUARTERLY REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 1

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA - END OF QUARTER VIEW

Row	Classification	Month 1	Month 2	Month 3	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	COMMON LINE DEMAND-MOU				
	Premium:				
2010	Originating				
2020	Terminating				
	Non-Premium:				
2030	Originating				
2040	Terminating				
	SWITCHED TRAFFIC SENS. DEMAND-MOU				
2050	Premium				
2060	Non-Premium				

QUARTERLY DATA

Row	Classification	Quarter x	
	(aa)	(ab)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	... Ruler Line
	COMMON LINE DEMAND		
2090	Single Line Business C. P. T.		
2100	Residence CPT Lifeline		
2110	Residence CPT Non-Lifeline		
2120	Multiline Business		
2130	Centrex Co and CTX Like Lines		
2140	Special Access Lines Subject to Surcharge		
2150	Total Billable Access Lines		

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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ARMIS QUARTERLY REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
CONF. TREATMENT TABLE
PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	1040	C, G
I	1090	C, G
I	ALL	U
II	2010	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
FOOTNOTE TABLE
PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:

I	1040	C	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	1410	ALL	2	Footnote 2 pertains to all columns of Table I row 1410
I	ALL	G	3	Footnote 3 pertains to all rows of Table I column G
II	2010	B	4	Footnote 4 pertains to Table II row 2010 column B

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	Footnote	
(a)	(b)	(c)	(d)	
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line
sample entries:				
I	1040	C, G	1	
I	1090	C, G		
I	1410	ALL	2	
I	ALL	G	3	
II	2010	B	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic					BATR
	1.	the Chesapeake and Potomac telephone companies			CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWWV
	2.	Bell of PA and Diamond State			PDTC
		1. Diamond State Telephone		- Delaware	DSDE
		2. Bell of Pennsylvania		- Pennsylvania	PAPA
	3.	New Jersey Bell			
		1. New Jersey Bell		- New Jersey	NJNJ
Bell South					BSTR
		1. Southern Bell			SBTC
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
		2. South Central Bell			SCTC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Company					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except Kansas		SWAG
U.S. West					USTR
		1. Mountain Bell			MSTC
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
		2. Northwestern Bell			NWTC
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
		3. Pacific Northwest Bell			PNTC
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Central Telephone Company					CETC
	1.	of Florida		- Florida	CEFL
	2.	of Illinois		- Illinois	CEIL
	3.	of Nevada		- Nevada	CENV
	4.	of Virginia		- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky				CBTC
Continental Telephone Company					COTC
	1.	Contel of California		- California	COCA
	2.	Contel of Illinois		- Illinois	COIL
	3.	Contel of Missouri		- Missouri	COMO
	4.	Contel of New York		- New York	CONY
	5.	Contel of Texas		- Texas	COTX
	6.	Contel of Virginia		- Virginia	COVA
GTE Telephone Operating Companies					GTTC
	1.	GTE California Inc.		- California	GTCA
	2.	GTE Florida Inc.		- Florida	GTFL
	3.	GTE Northwest Inc.			GTNW
			- Idaho & Montana		GTNA
				- Idaho	GTID
				- Montana	GTMT
			- OR, WA & Wstn CA		GTNB
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
	4.	GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Tennessee	GTTN
				- Virginia	GTVA
				- West Virginia	GTWV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
				- Iowa	GTIA
				- Michigan	GTMI
				- Minnesota	GTMN
				- Missouri	GTMO
				- Nebraska (also serving Kansas)	GTNE
				- Ohio	GTOH
				- Pennsylvania	GTPA
				- Wisconsin	GTWI
		7. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR
Rochester Telephone Corporation				- New York	RTNY
Southern New England Telephone				- Connecticut	SNCT
United Telephone System					UTTC
		1. United Tel. Co. of Florida		- Florida	UTFL
		2. United Tel. Co. of Indiana		- Indiana	UTIN
		3. United Tel. Co. of Missouri		- Missouri	UTMO
		4. Carolina Tel. and Tel. Co.		- North Carolina	UTNC
		5. United Tel. Co. of Ohio		- Ohio	UTOH
		6. United Tel. Co. of Penn.		- Pennsylvania	UTPA
		7. United Inter-Mountain Tel. Co.		- Tennessee	UTIM
				- Virginia	UTTN
					UTVA
Total Independent Companies					TICO
AT&T Communications					ATTC
Total Industry					TOTL

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 88-165
37375

In the Matter of	)
	)
Amendment of the Commission's Rules on the	)
Selection from Among Mutually Exclusive	)
Competing Applications Using Random	)
Selection or Lotteries in the	)
Public Land Mobile and Domestic Cellular	)
Radio Telecommunications Services	)

ORDER

Adopted April 29, 1988; Released May 4, 1988

By the Commission:

1. We are by this order amending Section 1.823 (a) of our rules. This section provides, inter alia, that when the Commission holds lotteries to select permittees in the Public Land Mobile and Domestic Cellular Radio Telecommunications Services, after the winner is selected, the process will be repeated until each mutually exclusive applicant is ranked.[1] The rationale for this requirement is that if the first ranked applicant is found to be unqualified there will be alternative selectees available and thus, there will be no need to conduct additional lotteries. Our experience in conducting several hundred Cellular Radio and Public Land Mobile lotteries has been that only in very few cases has it been necessary to go to the second ranked applicant. For this reason, and for reasons of administrative convenience, we conclude that it is in the public interest to amend Section 1.823 (a) to provide the Chief of the Common Carrier Bureau and the Managing Director the authority to determine on a case by case basis the number of applicants to be selected in each lottery.

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1 The lottery selection procedure actually consists of two steps. First, the lottery official selects the winning applicant, and then, the Mobile Services Division further reviews the application to see if it is in compliance with the Commission's cellular rules and indeed acceptable for filing. If the Division finds that the application so complies, it announces the winning applicant as the tentative selectee.

2. The amendment of Section 1.823 relates to matters of agency practice and procedure. Therefore, there is no need for Federal Register publication or service prior to the effective date of this order. See Section 553 (b) (A) of the Administrative Procedure Act, 5 U.S.C. Section 553 (b) (A).

3. Authority for this action is contained in Sections 4(i) and (j) and 303 (r) of the Communications Act of 1934, as amended. We hereby find that the public interest would be served by making this order effective immediately upon its release.

4. Accordingly, IT IS ORDERED That, Section 1.823 (a) is amended as set forth herein.

5. The secretary is directed to cause a copy of the Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster

H. Walker Feaster,
Acting Secretary

List of Subjects in 47 CFR Part 1

Administrative Practice and Procedure

Rule Change

Part 1 of 47 CFR is amended as follows:

Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 1.823 (a) is amended by removing the third sentence (following the words "Common Carrier Bureau.") and adding in its place the following:

Section 1.823 Random selection procedures for the Public Land Mobile and Domestic Public Cellular Radio Telecommunications Services.

(a) * * * The designated Lottery Official shall select the winning applicant from among mutually exclusive applicants. The Lottery Official may select in rank order a number of additional applicants. The number of additional applicants selected will be determined by the Chief of the Common Carrier Bureau and the Managing Director.

* * * * *

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FCC 88-50
37312

In the Matter of	)	
	)	
JAMES DERK	)	FOIA Control No. 87-181
	)	
On Request for Inspection of Records	)	

ORDER

Adopted: February 12, 1988 ; Released: February 18, 1988

By the Commission:

1. Before the Commission is an Application for Review filed on November 12, 1987, by James Derk (Derk), a reporter with the Evansville Courier, seeking review of a decision entered by the Chief, Field Operations Bureau (Bureau) on October 30, 1987. That ruling denied, in part, Derk's request for inspection of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The requester sought copies of material filed in the past year relating to Station WGBF-FM, Henderson, Kentucky, particularly reports concerning possible violations of FCC rules.

2. On appeal, the requester seeks access to a five-page complaint filed against Station WGBF-FM by a confidential source. The complaint consists of a two-page, undated letter addressed to Edythe Wise, Chief of the Complaints and Investigations Branch, Mass Media Bureau, and three pages of attachments. According to the requester, information concerning alleged station violations which is not "inextricably intertwined" with the informant's identity is not protected under the FOIA. The requester further contends that the disclosure of such information will not compromise the identity of the confidential informant if all references to the informant's identity are deleted therefrom. In addition, the requester seeks a copy of a May 18, 1987 letter from Richard L. Young, Esquire of Hayes and Young to Charles W. Kelley, Chief of the Enforcement Division, Mass Media Bureau, concerning Stations WGBF-AM/FM which was referenced in the material released by the Bureau, as well as copies of records containing any information about the fine assessed against the station (e.g., amount, notification method, appeal, correction and/or payment).

3. We have fully reviewed the foregoing and find no reason to disturb the rationale, or result, of the Bureau's ruling.[1]

4. IT IS ORDERED, That pursuant to 47 U.S.C. § 155(c)(5) and section 1.115(g) of the Commission's rules,[2] the Application for Review filed by JAMES DERK IS DENIED.

5. The Requester may seek judicial review of this decision pursuant to 5 U.S.C. § 552(a)(4)(B).

The officials responsible for this action are the following Commissioners: Dennis R. Patrick, Chairman; James H. Quello, and Patricia Diaz Dennis.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

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1 Even though we are not required to provide copies of documents which are already available to the public at large, see Lead Industries Ass'n. v. OSHA, 610 F.2d 70 (2d Cir. 1979); Mid Continent Telecasting, Inc., 79 FCC 2d 193 (1980), we have provided for the requester's reference copies of the following records, all of which are available for inspection in the Commission's files on Station WGBF-FM: a) Richard L. Young's letter of May 18, 1987, to Charles W. Kelley; b) the Bureau's Letter Decision dated October 8, 1987, from the Acting Engineer-in-Charge of the Commission's Chicago District Office, issuing a Notice of Apparent Liability against the station; c) a Notice of Radio Station Conditions issued by the Commission's Chicago District Office and served on the station on October 8, 1987; and d) a Schedule of Remittances Form dated November 2, 1987, with attachments, relating to the fine assessed against the station.

2 47 C.F.R. § 1.115(g). This statute and rule provide that the Commission may deny the Application for Review without specifying any reasons for the action taken.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88-49
37311

In the Matter of	)
	)
MCI Telecommunications Corporation	)
	)
Petition for Revocation of Operating Authority	)

SUPPLEMENTAL ORDER

Adopted: February 12, 1988; Released: February 18, 1988

By the Commission:

1. On January 25, 1988, we released an Order and Notice of Apparent Liability[1] (Order) in this proceeding. It has now come to our attention that on or about September 7, 1987, TeleSTAR, Inc. (TeleSTAR) may have filed with the Commission a pleading entitled "Reply to MCI's 'Opposition to New Matter Contained in TeleSTAR's Reply to Opposition to Petition for Revocation.'" We were not aware of TeleSTAR's Second Reply at the time of our Order and therefore did not consider it. See Order, ¶ 1 and n.3. While we are unable to determine whether TeleSTAR's Second Reply was in fact formally filed with the Commission,[2]

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1 FCC 88-24, adopted January 21, 1988.

2 We are unable to locate an original or any official copy of TeleSTAR's Second Reply. We have, however, located an unstamped copy that was apparently informally provided to Common Carrier Bureau staff. Service of pleadings (either formally or informally) on Commission staff does not, of course, constitute filing with Commission. See Section 0.401(a)(1)(i) of the Commission's Rules.

since a copy has now been located, and in order to ensure that all of TeleSTAR's allegations are treated fully and fairly, we are now separately addressing the matters raised therein.[3]

2. We note at the outset that much of TeleSTAR's Second Reply simply reiterates matters raised in its prior pleadings and disposed of in our Order.[4] TeleSTAR's Second Reply does, however, present certain new evidence and arguments, which we address below. None of the new evidence or arguments causes us to change the conclusions reached in the Order, and we make no such changes herein.

3. TeleSTAR claims that Attachments AAA. 1 and AAA. 2 demonstrate that MCI "was in apparent knowing violation" of Yuba County zoning and building ordinances and, in connection therewith, engaged in unlawful premature construction. Second Reply at 3. It claims that this evidence constitutes a "smoking gun" regarding other "similar previous violations" by MCI. Id. While violations of Yuba County ordinances were not previously alleged, and therefore MCI had no opportunity to respond, the Order addressed admitted violations of similar local laws and determined that they "do not affect MCI's qualifications to remain a Commission licensee." Order, ¶ 31. The same rationale reflected in the Order leads us to conclude that any similar violations by MCI of local ordinances do not affect MCI's qualifications. See id. As to any unauthorized premature construction in Yuba County, Attachments AAA. 1 and AAA. 2 reflect only the fact that concrete was poured for equipment shelters and that steel for the tower was

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3 We recognize that TeleSTAR's Second Reply, even if formally filed, was not authorized under our rules. See Section 1.45 of the Commission's Rules. In addition, no request for its acceptance was apparently filed. Compare MCI Motion for Leave to Respond to Reply (Aug. 14, 1987); see Order n.3. Nevertheless, we will consider it in order, as stated above, to ensure that all of TeleSTAR's allegations are treated fully and fairly.

4 For example, TeleSTAR repeats its generalized allegation regarding violations of federal environmental laws, again misstating Commission policy in this area. Second Reply at 8. See Order, ¶ 32.

stacked on the Erle site (Sacramento/Chico route) prior to grant of Special Temporary Authority (STA) on February 10, 1987. Such construction is not improper. See Order, ¶ 5.

4. In reiterating its arguments alleging unfair treatment of it in comparison to MCI, Second Reply at 5-7,[5] TeleSTAR offers one piece of new evidence, a letter from the Chief of the Domestic Facilities Branch that states that TeleSTAR's allegations in this proceeding "could raise questions" about MCI's conduct in connection with pending MCI applications. Id., Att. BBB. We fail to see how this letter suggests in any way that it was improper for the Domestic Facilities Division to have conditioned MCI applications on the outcome of this proceeding. See id. at 6 and n.12.

5. TeleSTAR offers Attachments CCC. 1, CCC. 2, CCC. 3 and CCC. 4 in support of its previously-asserted allegations that MCI engaged in unlawful premature construction at the Erle and Gridley sites (Sacramento/Chico route). These attachments, which consist of applications by, and authorizations for, Southern Pacific Transportation Company (Southern Pacific) with respect to these sites in fact support the conclusion in the Order that Southern Pacific, not MCI, was the relevant applicant/licensee responsible for any premature construction. See Order, ¶¶ 13-14. Indeed, as TeleSTAR recognizes, MCI's involvement was simply that it had "crews working for McLaughlin Construction" to erect the towers for Southern Pacific. Second Reply at 9 and n.20.

6. TeleSTAR offers new hearsay evidence that "TeleSTAR has talked to" James Wimberly and Dale Wimberly and that these individuals are "emphatically certain" that they saw an MCI microwave tower constructed at MCI's New Zion site (Lafayette/New Zion route) by late December 1986/early January 1987, prior to grant of a construction permit to MCI on February 26, 1987. Second Reply at 13. We cannot give credence to such hearsay reports.[6]

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5 These matters were disposed of in the Order at paragraphs 44 and 45.

6 We note that TeleSTAR incorrectly describes Attachments HH. 3 through HH. 6 of its Reply to Opposition to Petition for Revocation of FCC Authority for MCI (Reply) as being from individuals "who witnessed construction of MCI's New Zion site completed by the first of January 1987." Second Reply at 12. One of the individuals (Dale Wimberly) said in the referenced unsworn, unnotarized statement only that he observed some unspecified construction taking place during the late 1986/early January 1987 period. Reply, Att. HH. 4. James Wimberly said in his unsworn unnotarized statement that he observed unspecified construction taking place during 1986, and, contrary to Dale

7. TeleSTAR argues that MCI has not conclusively proven that it did not begin construction on its Cabin Gulch site (Denver Junction/Colorado Springs route) prior to grant of its STA. Second Reply at 13-15 (alleging that it is "quite likely" that tower construction "could have begun" before grant of the STA). MCI has submitted an affidavit and concrete test reports (referred to in the Order (¶ 20) as "daily field reports") supporting its assertion that no unauthorized premature construction occurred. Opposition, Atts. A.1 and A.2. In any event, no such proof was required, since TeleSTAR's only basis for the allegation that unauthorized construction began prior to grant of an STA on March 26, 1985 is an unsworn, unnotarized affidavit stating that some unspecified construction began in early March 1985 and continued for "about three months." Reply, Att. DD. 3. See Order, ¶ 20.[7]

8. Accordingly, IT IS ORDERED that the Order and Notice of Apparent Liability in this proceeding IS SUPPLEMENTED as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Wimberly, that "the site was finished" by the end of the year. Id., Att. HH.5. Another individual said he first noticed unspecified construction taking place before Christmas, 1986, and, in contrast to James Wimberly's statement, that construction continued until the site was completed about three or four months later, i.e., March or April, 1987, one or two months after the construction permit was granted. See Reply, Att. H. 3. A fourth individual did say that the tower was built and finished prior to Christmas, 1986, id., Att H. 6, but this single unsworn, unnotarized statement was persuasively contradicted by MCI's contemporaneous business records, including daily field reports, showing, inter alia, that tower anchors were still being poured as late as March 5, 1987, consistent with the statement in TeleSTAR's Attachment HH.3. See Opposition to New Matter Contained in TeleSTAR's Reply to Opposition to Petition for Revocation (Opposition), Att. B. 4.

7 TeleSTAR's suggestion that all pre-grant site-related construction is prohibited is not correct. See Order, ¶ 5.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88-162
37386

In re	)
	)
Request for Declaratory Ruling by	)
	)
WEBE-108 RADIO COMPANY, L.P.	)
Licensee of WEBE(FM),	)
Westport, Connecticut	)

ORDER

Adopted: April 25, 1988 ; Released: May 13, 1988

By the Commission:

1. The Commission has before it an application for review filed by WEBE-108, licensee of WEBE(FM), Westport, Connecticut, on October 15, 1987.* WEBE seeks review of an October 2, 1987, Mass Media Bureau ruling, 2 FCC Rcd. 5963 (M. Med. Bur. 1987), which denied its request for a declaratory ruling that appearances by legally qualified candidates on its proposed programming would be exempt from equal opportunities as "on-the-spot coverage of a bona fide news event."

2. After a careful review of the request, we believe that the Bureau's ruling was correct, and that the application for review does not contain sufficient grounds to warrant reversal or modification.

3. Therefore, pursuant to Section 1.115(g) of the Commission's rules, the application for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

* On April 4, 1988, King Broadcasting Company filed a statement in support of WEBE's request for a declaratory ruling.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 88-110
37330

In the Matter of	)
	)
GENERAL COMMUNICATION, INC. v.	)
ALASCOM, INC.	)
	)
Referral of Questions from District Court	)
for the Western District of Washington	)
at Seattle, Case No. C84-523C	)
	)
Request for Declaratory Ruling Pertaining	)
to Alascom's Bid To Provide Federal	)
Telecommunications Private Line Service	)

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1988 ; Released: March 14, 1988

By the Commission:

1. This proceeding relates to cost allocations made by Alascom for its bid to provide federal telecommunications private line service to the Federal Government. The District Court for the Western District of Washington has referred certain questions to this Commission in the matter captioned above.[1] The Court directed the parties to request this Commission to rule on questions formulated by the parties. The Referral Order states in pertinent part as follows:

* * *

3. (a) Alascom contends that the FCC should determine whether Alascom arbitrarily shifted or improperly allocated portions of its costs to its interstate rate base as alleged in paragraph 27(1) of the Amended Complaint.[2]

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1 General Communication, Inc. v. Alascom, No. C84-523C (W.D. Wash. Aug. 26, 1985) (Referral Order). This Commission requested pleadings on the questions asked in the Referral Order, In the Matter of Referral of Questions, Mimeo No. 4563 (unpub.), released May 19, 1986.

2 GCI's Second Amended and Supplemental Complaint for Antitrust Damages and Injunctive Relief and Jury Demand was filed with the District Court on October 17, 1985 in General Communication v. Alascom, Case No. C84-523C (W.D. Wash., filed Apr. 24, 1984).

(b) GCI contends at this time that the FCC should determine what FCC rules and provisions of the Communications Act relate to the allocation of Alascom's costs for services to GSA commencing November 1983 (section 6.2.4.(F)(18) of its Tariff FCC No. 1, effective 11/5/83).

(c) GCI further contends that the Commission should answer the following questions:

(i) What were the total costs of the Vashon Island earth station facility and other facilities used in providing the service, including direct and indirect costs?

(ii) What provisions of the Communications Act and what FCC rules and policies govern the allocation of these costs between the GSA service and other services?

(iii) What was the proper allocation of costs between such categories of services pursuant to the applicable provisions of the Communications Act and applicable FCC rules and policies?

4. GCI also contends that the FCC has already ruled on Alascom's proposed Private Line Service Tariff and its accompanying cost justification materials for various pricing schedules and short-haul and longer distance channels. Alascom, Inc. Tariff F.C.C. No. 7, Private Line Service (Transmittal No. 244), released June 18, 1984.

* * *

General Communication v. Alascom, No. C84-523C (W.D. Wash. Aug. 26, 1985).3

I. BACKGROUND

2. GCI, the plaintiff in the Seattle antitrust litigation, is a facilities-based satellite common carrier which provides message toll and

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3 Some of these referred questions are answered in separate proceedings. See Referral of Questions from GCI v. Alascom, FCC 88-48, released Feb. 26, 1988. See also Referral of Questions from GCI v. Alascom, File Nos. ENF-87-08, ENF-87-09, ENF-87-10, ENF-87-11, ENF-87-12, ENF-87-13, ENF-87-16, FCC 88-33, released Feb. 17, 1988. See also General Communication, FCC 87-269, released Aug. 11, 1987; and GCI v. Alascom, FCC 86-202 released May 5, 1986, recon. denied, 2 FCC Rcd 805 (1987).

other interexchange telecommunications services between Alaska and the other 49 states and foreign countries. Alascom is a multi-service telecommunications provider which provides intrastate telecommunications services in Alaska and interstate services to the other 49 states and foreign countries. Alascom is directly affiliated with several local exchange companies serving various locations in Alaska. Alascom and GCI are the only interexchange carriers with facilities in Alaska.

3. On February 15, 1979, the General Services Administration (GSA) sought bids to provide the Federal Government with voice grade circuits for private line service between Alaska and the lower 48 states for 111 months. GCI, teamed with American Satellite, and Alascom submitted proposals on the final version of the request for proposal. Alascom's bid included work by RCA Americom (RCA or Americom) as a subcontractor at Edwards Air Force Base and Goddard Space Flight Center. GSA awarded the contract in August 1982 to Alascom.4

4. The contract required Alascom to provide nine T-1 circuits (or "T-streams")5 between Alaskan locations of Anchorage, Juneau, and Fairbanks, and lower-48 locations of Seattle, Washington, Mohave, California, and Washington, D.C. The contract also provided that GSA had the option to order three additional T-1 circuits at the 25th month of the contract and six more at the 43rd month, for a total of 18 circuits. Alascom's price for the first nine circuits was $17,300 per circuit. The price during the optional phase was $14,950 per circuit. Alascom filed a tariff for the GSA service containing these new rates and accompanying cost support materials on May 9, 1983, Transmittal No. 215. GCI did not file a petition to deny or to investigate the proposed revisions.

5. Alascom leased transponders from RCA Americom to provide satellite communications. To comply with the contract, Alascom subcontracted with RCA to build earth stations at Goddard Space Flight Center in Washington, D.C., and at Edwards Air Force Base in Mojave, California. These facilities belonged to RCA, and the subcontract provided that the facilities could only be used to provide the GSA service. To the extent that there was unused capacity by GSA, Alascom and RCA had to reach further agreement on any other

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4 Alascom's bid was approximately $40 million over the life of the service and GCI's bid was approximately $61 million. Alascom Response to Request for Declaratory Ruling Pertaining to Alascom's Bid To Provide Federal Telecommunications Private Line Service (Alascom Response) at Exhibit A (filed Jan. 7, 1987). See GSA Request for Proposal DCPA-79-3.

5 A T-stream is a T-1 circuit which contains 24 voice grade channels each with a bandwidth of 64 kilobits.

use. Alascom also had to construct an earth station in Seattle to comply with the GSA contract. Alascom provided service in Anchorage and Juneau through its existing earth stations in these cities.

6. In the instant proceeding, GCI requests rulings on the following issues: (1) the methodology Alascom used in its cost support materials; (2) Alascom's allocation of costs; (3) Alascom's reporting of costs of the Vashon Island, Washington, station; and (4) whether this Commission has ruled on the cost support materials filed with Alascom's tariff on the GSA service.

II. DISCUSSION

7. We address questions 3(a) and 3(b) of the Court's Referral Order together because they are related. Question 3(a) requests this Commission to determine whether Alascom arbitrarily shifted or improperly allocated portions of its GSA costs to its rate base for interstate private line services. Question 3(b) asks this Commission to determine which Commission rules and policies and which provisions of the Communications Act governed Alascom's allocation of costs for services to GSA when Alascom filed its tariff in late 1983.

A. Cost methodology and cost support materials

1. Contentions of Parties

8. GCI claims that Alascom should have calculated its costs for the bid and tariff using fully distributed costs (FDC). GCI Request for Declaratory Ruling at 5 (filed Nov. 26, 1986) (GCI Request). GCI contends that Alascom bid the GSA contract and prepared a tariff filing on a marginal cost basis, that Alascom was required to disclose that fact to this Commission and to provide the fully distributed costs of the GSA service, that it had to explain and support any allocations of less than full costs to the GSA contract and tariff, and that it had to justify such allocations so that this Commission could properly evaluate and decide whether to approve them. GCI Reply to Alascom Response at 5-6 (filed Feb. 6, 1987) (GCI Reply). GCI believes that the cost of providing service should directly control the setting of rates. Id. GCI asserts that unless Alascom disclosed and justified its use of the marginal cost method and obtained Commission approval, Alascom's rates violated this Commission's costing and reporting standards. Id. at 6.

9. Alascom agrees that rates should be based on costs, and it states that the rational and reasonable way to allocate common costs to a service is to determine the costs caused by that particular service. Alascom Response to GCI Request at 3 (filed Jan. 7, 1987) (Alascom Response). Alascom claims that this Commission has recognized that a service is not subsidized if its price exceeds the costs directly attributable to its

production. Id. at 3-4.6

10. Alascom asserts that, in other competitive bid situations, this Commission has permitted rates to become effective that are not based upon fully distributed costs. Alascom Response to GCI Supplemental Filing at 3 (filed June 9, 1987) (Alascom Response to GCI Supp. Filing). Alascom argues that adopting FDC as a price floor would effectively prohibit the regulated utility from raising or lowering prices to engage in competition and would be inconsistent with Commission endorsement of price competition in the specialized common carrier decision.7 Id. at 4. GCI disputes Alascom's assertion that FDC is inconsistent with promoting competition. GCI Reply to Alascom Response to Supp. Filing at 6 (filed July 9, 1987) (GCI Third Reply).8

11. Alascom states that it applied an FDC analysis that omitted some cost allocations and over-allocated others. Alascom Response to Supp. Filing at 7. Alascom's June 9 pleading "supplements" its original tariff filing by adding previously unallocated costs for land, building, and general plant in pricing the GSA bid; it claims that it still maintains the bid price of $17,300 per T-stream per month. Id. at 8. GCI contends that adding these costs would have increased the total cost of the contract by more than 25 percent. GCI Supplemental Filing at 12 (filed Apr. 23, 1987) (GCI Supp. Filing).

12. Alascom explains that it used certain assumptions to develop its supplemental schedules that are "somewhat different from [its] original pricing analysis." Alascom Response to GCI Supp. Filing at 9. In particular, it amortizes operating expenses attributable to the Goddard and Edwards facilities, "consistent with the way they were booked by Alascom." Id. Alascom believes that its subsequent analysis offers a "reasonable retrospective FDC analysis" of GSA service cost elements. Id. at 10. Alascom states that, in response to GCI claims, it increased from 50 percent to 100 percent the allocation of the RCA Americom facility costs to the GSA bid. Id. at 11. It also increased the allocation of the Vashon Island earth station to $900,000, rather than the $452,000 allocated in the bid

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6 Alascom cites Private Line Rate and Volume Discounts, 97 FCC 2d 923, 946-47, n.63 (1984). GCI claims that the Commission did not adopt the marginal cost standard even for volume discounts. GCI Reply at 5.

7 See MCI v. AT&T, 708 F.2d 1081, 1124-25 (7th Cir.), cert. denied, 104 S. Ct. 234 (1983).

8 GCI notes that in AT&T, 61 FCC 2d 587 (1976), the Commission states that failing to obtain justification of AT&T's costs could enable AT&T to use cross-subsidies from monopoly services as an anticompetitive "protective umbrella." GCI Third Reply at 6.

preparation, which represents 100 percent of the cost of a stand-alone facility. Id. Alascom further spread the revenue requirement per transponder over 18 of the remaining 20 transponders not used for GSA and excluded this revenue requirement in reallocating its costs. Id. It concludes, however, that even with these assumptions, Alascom's GSA bid recovers its fully distributed costs. Id.

13. Alascom states that it adhered to an FDC cost and price standard in preparing its tariff. Alascom Supplemental Response to GCI Reply at 3 (filed Aug. 12, 1987) (Alascom Third Response). It states that its tariff presented every cost item attributable to the GSA service and that it established prices to cover those costs plus a reasonable rate of return. Id. Alascom states that its rates for GSA service were lawful and that the rates recovered costs in compliance with this Commission's standards. Id. Alascom claims that it proves that its rates recovered its costs in its June 9 pleading, which contained a retrospective FDC analysis, including costs that reasonably "could have been included" with its original analysis. Id. Alascom asserts that its tariff identified dollar amounts for cost allocations and that these costs were "partial allocations." Id. at 4. It claims that GCI or this Commission could have questioned Alascom's original cost support data when those data were filed. Id.

2. Conclusion

14. The Communications Act requires carriers to establish charges that are "just and reasonable," that do not create "unjust or unreasonable" discrimination in charges for "like communications service," and that do not give "any undue or unreasonable preference" to any person, class of persons or locality.9 The carrier has the primary responsibility for developing a schedule of charges that complies with those requirements. Although the Act gives this Commission the power to prescribe carrier charges in order to remedy or prevent violations of the Act, most charges of most carriers are and always have been carrier-initiated. The carrier-initiated charges of dominant carriers such as Alascom must be filed with this Commission, but such a filing is not a submission for approval and acceptance of a tariff does not imply that any of the charges are lawful.

15. Any carrier-initiated charge that has not been found to be lawful in a Section 208 complaint proceeding or a Commission-initiated tariff investigation remains subject to challenge at any time. The Alascom tariff in question is an uninvestigated carrier-initiated tariff. The tariff became effective by operation of law when the applicable notice period expired. This Commission did not initiate an investigation to determine whether the tariff charges were or were not lawful; neither GCI nor any

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9 47 U.S.C. § 202(a).

other interested person has filed a Section 208 complaint alleging that the tariff charges violate statutory requirements. The pleading filed in response to the referral order cannot serve as a complete substitute for a tariff investigation or a Section 208 complaint proceeding. Those pleadings have not produced a record that would be sufficient to enable us to reach a definitive determination that these particular charges are or are not lawful under the Communications Act. We have, nevertheless reached some conclusions that should be useful in framing issues for the antitrust trial.

16. The Communications Act does not specify a particular method for carriers to use to establish just, reasonable, non-discriminatory charges that do not create any undue preference.10 These statutory provisions have, however, been interpreted to require generally that carriers establish rates that are cost-related.11 Some form of FDC methodology is most commonly used to establish cost-related charges in a multi-service environment, but carriers are not foreclosed from using other methods in the absence of a Commission rule or order prescribing a ratemaking methodology. This Commission has prescribed ratemaking methodologies for some service categories of some carriers, but those rules and orders are not applicable to Alascom private line services.12

17. It would not be necessary to determine the outer limits of Alascom's ratemaking discretion if we had initiated an investigation to determine the lawfulness of the tariff charges in question. Alascom does not claim that circumstances justified a departure from cost-related charges. Alascom's ratemaking methodology arguments are, however, somewhat confusing. Early in this proceeding, it claimed that the use of marginal costing complied with this Commission's Rules, but later Alascom pleadings appear to abandon this claim and assert that Alascom used FDC in its original tariff filing. Alascom then submitted new cost support calculations using an FDC method. We would infer that Alascom chose to develop an FDC methodology to satisfy its statutory obligations, that Alascom acknowledges that the FDC methodology it used to compute the tariffed charges was deficient in some respects, and that Alascom now contends that correction of those deficiencies would not justify a

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10 See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Notice of Proposed Rulemaking, 2 FCC Rcd 5208, 5211 & nn.49-56 (1987).

11 See, e.g., MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 411 (D.C. Cir. 1982).

12 Alascom is, however, subject to jurisdictional separations rules for the apportionment of costs and revenues between interstate and intrastate telecommunications services.

conclusion that the charges are unreasonably low.

18. GCI apparently claims that Alascom's original and revised FDC methodologies are defective and that the use of a rational FDC methodology would demonstrate that Alascom's charges were unreasonably low. The record does not enable us to determine whether the rates are just and reasonable, but it does enable us to appraise some of the specific cost allocation defects that GCI has alleged.

19. Although some of Alascom's cost allocation procedures may be inconsistent with Alascom's obligation to develop a reasonable cost allocation methodology, we do not agree with GCI's claims that Alascom violated Section 61.38 of this Commission's Rules. GCI's contentions appear to be based in part upon a misconception with respect to the nature and purpose of Section 61.38. The adoption of Section 61.38 did not convert a regulatory scheme that is based primarily upon carrier-initiated rates into a regulatory scheme that requires prior regulatory approval for rate changes. Section 61.38 was not designed to produce data that would be sufficiently detailed to enable this Commission to determine whether the carrier's rates are lawful. The Section 61.38 rules are designed to provide us with sufficient information to perform an initial review to determine whether the tariff revision presents a question of lawfulness that warrants summary rejection or the initiation of an investigation. Section 61.38 is not intended to establish independent tariff oversight by third parties such as GCI. A Commission decision to refrain from initiating an investigation of a newly filed tariff charge or provision does not affect a third party's right to challenge the lawfulness of the charge or provision in a subsequent Section 208 complaint proceeding.

20. The record established in pre-trial depositions does show, however, that Alascom used some questionable cost allocation practices. A more complete description of Alascom's procedures and assumptions in the Section 61.38 material might have led to a decision to initiate an investigation at that time. Even if this were the case, Alascom's failure to provide more details in its Section 61.38 submissions did not violate GCI's rights.

B. Effect on other services

1. Contentions of Parties

21. GCI claims that Alascom knowingly failed to disclose the impact the GSA contract would have on other Alascom services. GCI Reply at 19. GCI deems Alascom's situation here as a "textbook case of cross-subsidization that the Commission has sought to prevent." GCI Reply at 7. GCI contends that this Commission has expressed concern that a monopoly carrier might cross-subsidize the loss of revenue from its competitive services with

revenue from its monopoly services. Id. at 6-7.13 GCI believes that this Commission has attempted to prevent implementation of non-compensatory rates to protect consumers from having to subsidize other services and to protect the dominant carrier's competitors from predatory practices. Id. at 7-8.14 GCI claims, and Alascom fails to deny, that the GSA service would cause a shift in demand away from Alascom's pre-contract, private line business totaling $1,570,488 in annual revenue. GCI Third Reply at 21.15

22. GCI asserts that costs are not accurately presented in Alascom's Section 61.38 cost support data and so are not reflected in the rate. GCI Reply at 9. GCI attributes Alascom's revenue deficiencies in the private line category to Alascom's "below-cost pricing of its GSA bid." GCI Request at 19. GCI claims that while Alascom's calculations anticipated a $10.3 million interstate private line loss in 1983, Alascom's revenue for MTS services was $367 million. Id. It states that in 1983, Alascom earned total profits of $58 million on all its services taken together. Id. Alascom denies that it lost money on private line services. Alascom Response at 11.

23. Alascom asserts that the GSA service has not been cross-subsidized. Alascom Supp. Response at 7. It states that, "[e]ven if the GSA rate did not fully cover all direct and indirect capital and noncapital costs," the shortfall did not cause any other Alascom rate to be higher. Id. at 8. Alascom asserts that the GSA service is not subsidized because "the GSA service operates with a positive rate of return." Alascom Response to GCI Supp. Filing at 21. Additionally, it argues that facilities used for GSA service, including the earth stations at Goddard, Edwards, and Vashon Island, are primarily dedicated private lines that can have no effect on interstate MTS rates, since they are in different categories under separations procedures in Part 67 of this Commission's Rules.16 Id. at 22. It explains that allocations of common facilities, such as the space segment costs, do not lead to subsidization because separations are usage- or traffic-based. Id.

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13 GCI cites AT&T, 86 FCC 2d 689, 696 (1981).

14 GCI quotes AT&T, 95 FCC 2d 510, 517 (1983).

15 GCI quotes Frank Brosh, an employee of Alascom, as saying that he did not include the data showing that providing the GSA service would cause a shift of existing Alascom business resulting in an annual revenue loss of $1,570,488 "for obvious reasons." GCI Third Reply at 19.

16 The separations procedures have been modified and are now codified at 47 C.F.R. Part 36. These changes are not relevant to the Alascom bid at issue here since they were not in effect at that time.

24. Alascom further states that the allocation of common plant to the private line separations categories reduces the interstate MTS allocation. Id. It claims that private line traffic routed through the satellite, even if non-compensatory, would reduce the amount of plant allocated to the interstate MTS category, but that monetary losses attributable to private line are borne only by the company, and ultimately its shareholders. Id. Alascom believes that all evidence submitted to this Commission proves that Alascom has complied with the separations procedures which preclude cross-subsidization. Id. at 22. It contends that the separations procedures govern allocation of plant between federal and state jurisdictions but have "no direct bearing on ratemaking." Id. at 8 n.10.

2. Conclusion

25. We agree with GCI's observation that Alascom should have identified a decrease in other private line revenues of approximately $1.5 million in its cost materials filed to support the GSA tariff at issue here. Section 61.38 of this Commission's Rules requires a carrier filing a tariff to estimate the effect the tariff or revision will have on the affected service as well as on the carrier's other services. 47 C.F.R. § 61.38 (b)(1)(iii). Alascom's failure to identify the $1.5 million revenue effect violated Section 61.38 of our Rules. If we had been apprised of this omission at the time Alascom's tariff was filed, this omission might have been a factor in deciding whether to investigate its tariff. As noted previously, however, the insufficiency of cost support materials does not affect the rights of private parties.

26. In any case, however, the $1.5 million decrease, by itself, is insufficient to support the claim of cross-subsidization made by GCI. The $1.5 million decrease in private line revenues that was alleged to have been created by the GSA contract represented revenues that Alascom had already received from GSA for private line services to which GSA subscribed prior to the contract. Alascom also receives revenues from the new GSA contract rates, although the amount of these revenues is nowhere identified in the record. If the GSA contract revenues exceed the pre-contract revenues, GCI's argument alleging cross-subsidization would be considerably weaker because the net revenue effect on the private line category as a whole would be positive. Even if the net revenue effect from the GSA contract were negative, however, we could not assume that the lost revenues were reflected in other private line rates. Alascom may have simply chosen to earn a decreased rate of return on the private line category as a whole.

C. Cost Allocations

27. GCI asserts that Alascom submitted a rate in its GSA bid and related tariff that it knew would not generate revenues sufficient to recover its costs. GCI Request at 4. GCI claims that after Alascom decided what price would win the contract, Alascom manipulated the cost data supplied to this Commission to conform to the rates it proposed. Id. at 5.

GCI alleges that the resulting revenue shortfall was subsidized by MTS and WATS customers nationwide. Id.17

28. Alascom states that it produced its bid to GSA by using proper and reasonable costs to develop its rates. Alascom Response at 3. Alascom claims that preparation of its bid followed the normal company procedures used in procurements. Alascom Supp. Response at 7-8. It argues that its bid reflected "greater efficiency," because of its existing facilities for Anchorage, Juneau, and Fairbanks; its "invaluable experience"; and its "more efficient partner, RCA." Alascom Response at 4-5. Alascom believes that a carrier should have flexibility to make good faith judgments on the factors that make up pricing decisions in competitive bids. Alascom Supp. Response at 12. It contends that the weight of evidence shows that its judgments in the rate development process were made in good faith. Id.18 Alascom asserts that it did not manipulate costs because it was aware that there is a regulatory requirement that service offerings be cost-justified and that it was likely that a successful bid would receive close scrutiny. Alascom Supp. Response at 8. Alascom states that it has always maintained compensatory rates for its private line services. Alascom Response at 9. Alascom explains that shortfalls from targeted total interstate private line revenue for 1983 had no relationship to the GSA contract, but rather were a result of adding to the rate base the costs of Alascom's satellite launched in late 1982. Id. at 10-11.

29. Before delving into the specific cost allocation questions raised by GCI, it is readily apparent that the parties have devoted much attention to the issue of whether Alascom deliberately manipulated its costs to produce a bid price that would win the contract rather than using adequate cost justification, or whether it concealed facts from this Commission. We do not believe that we can decide on this record issues related to the subjective intent of Alascom employees who prepared the GSA bid because this issue is vigorously disputed. The intent issue would be relevant to us if we had been asked to impose sanctions against Alascom for willfully

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17 GCI points out that in discovery materials it found a handwritten note by Thomas Musson (an employee of GCI, formerly employed by Alascom who participated in preparation of the bid) reading "rates far below costs." Supplemental Filing of GCI (GCI Supp. Filing) at 9. GCI appears to argue that this notation proves that these costs were being subsidized by revenues from other services. Alascom responds that this note referred to previously developed rates based on a different set of assumptions than the tariff work papers used to prepare the GSA bid. Alascom Response to GCI Supp. Filing at 13.

18 GCI contends that Alascom's concealment of facts from this Commission dispels "any possible inference of good faith." GCI Second Reply at 4.

violating our Rules. But we have not been asked to do so. We believe these issues are more relevant to the issue of whether Alascom had an anticompetitive intent in submitting the bid or its associated tariff. This issue has not been referred to us and we believe it is one which is best addressed by the Court during the conduct of the antitrust litigation. Therefore, we confine our analysis to the specific cost allocation issues identified by the parties.

1. Rate of return

a. Contentions of Parties

30. GCI contends that the 10 percent rate of return Alascom used in setting its rates for the GSA service was less than the 13 percent Alascom was earning for other interstate services. GCI Supp. Filing at 26. It presumes that Alascom therefore must have improperly shifted costs to other services.19 GCI Reply at 17-19. GCI claims that Alascom usually used a 13 percent rate of return in calculating its rates for bids, but that for the GSA service Alascom treated the rate of return as "simply another cost to manipulate." Id. at 18. Alascom states that it submitted its bid with the intention to win the procurement, but claims that Alascom's management wanted any bid submitted to recover all costs and to achieve a reasonable rate of return. Alascom Supp. Response at 6. It claims that data show positive earned rates of return for the private line category of 10.29, 11.87, 7.4, 8.19, and 9.71 percent for 1981 through 1985, and that it projected returns of 8.23 and 10.59 percent for 1986 and 1987. Alascom Response at 11.20

31. GCI contends that in addition to lowering its rate of return, Alascom may have used a calculation that resulted in an unusually low return base. GCI Supp. Filing at 27. It explains that the "return base" used to calculate Alascom's return was not its installed cost but its installed cost minus its depreciation reserve. Id. It further states that the size of the reserve is determined by multiplying the installed cost by a depreciation reserve factor. It alleges that Alascom used "an excessively high" depreciation reserve factor in calculating its revenue requirement for GSA, which would have increased Alascom's cost to cover its rate of return. Id.

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19 It cites this Commission's decision in AT&T, 61 FCC 2d 587 (1976), as finding that AT&T was earning a rate of return for competitive services that was unreasonably below its overall system level of return.

20 See Response of Alascom to Federal-State Joint Board Request for Data Relating to the Alaska Market, CC Docket No. 83-1376 (filed July 15, 1986).

32. GCI alleges that Alascom used a 10 percent rate of return to compute its rates, and actually earned no more than a 3.97 percent return, even though its cost of capital was significantly higher than 10 percent. GCI Third Reply at 2. It reiterates that Alascom experimented with a variety of return levels and then decided to design its rate for the GSA service based on a 10 percent rate of return which would conform to its preselected price. Id. GCI claims that Alascom indicates in its recalculated cost support materials submitted in the instant proceeding that it achieved a return on GSA of 3.97 percent. Id. at 13.21 GCI asserts that the 3.97 percent rate of return consisted of a total return of $2.2 million over the 10-year life of the contract, and that $1.9 million of that amount arose from the income tax benefits derived from the taxable loss on the contract. Id.

33. Alascom claims that its future business prospects supported the partial allocation of capital costs for the Seattle, Mojave, and Goddard earth stations to services other than GSA services, and that it planned for the Vashon Island earth station near Seattle to handle traffic in addition to the GSA traffic. Alascom Response at 5. Alascom states that return on equity is only one component in rate of return and that Alascom originally provided for a rate of return of 10 percent after taxes. Alascom Supp. Response at 9. Alascom states that a utility's anticipated capital cost is not, by itself, a measure of the compensatory nature of its rates. Alascom Supp. Response at 10.

34. Alascom states that it has shown that the rates for the GSA service were lawful and recovered costs in accordance with Commission standards. Alascom Supplemental Response after GCI Third Reply at 3 (filed June 9, 1987) (Alascom Third Response). Alascom claims that its June 9 adjustments in costs and "reasonable retrospective modifications" to the analysis lowers the rate of return to 9.63 percent. Alascom Response to GCI Supp. Filing at 7. Alascom argues that its GSA rates recovered its costs, and that, even after it adds costs which GCI would attribute to the GSA service, Alascom earned a rate of return of nearly 4 percent. Alascom Third Response at 3-4.22 Alascom contends that its GSA rates are lawful

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21 We will not speculate, on the basis of Alascom's recasting of the allocative process in its Response to GCI Supplemental Filing, whether a 4 percent rate of return would have been reasonable. The reallocations proferred by Alascom were submitted only for the purpose of argument and do not represent what it would have targeted as its rate of return had it made the allocations suggested by GCI in its initial tariff filing.

22 Alascom submitted new cost support materials with its Third Response which contained a retrospective FDC analysis and a rate of return calculation of 9.67 percent.

according to Commission standards even if GCI's rate of return arguments are accepted. Id. at 4. Alascom asserts that its tariff identified dollar amounts for cost allocations and that these costs were "partial allocations." Id. It claims that GCI could have questioned its original support data when they were filed, but did not. Id.

35. In response to these arguments, GCI states that Alascom had the incentive not to recover fully its cost of capital because it was faced with a competitor attempting to enter the Alaska market. GCI Reply at 18-19. GCI claims that Alascom deliberately bid the GSA contract at a rate of return lower than its then-current cost of capital. GCI Second Reply at 11. GCI contends that the cost of capital is just as real a cost as that paid for labor, material, and supplies, and that the cost of capital must be recovered in the same manner as other costs of a service. GCI Third Reply at 13. It considers Alascom's 10 percent rate "below cost" whether the rate of return was prescribed by this Commission or was based on Alascom's cost of capital. Id. at 14-15.

36. GCI asserts that an Alascom deposition witness calculated the cost of capital by using financial data over a long period of time, 1926 to 1983, to "flatten" swings in the market, and that he weighted these data to reflect a hypothetical capital structure with a debt to equity ratio of 50 percent each. Id. at 16. GCI claims that this witness stated that Alascom's interstate risk was no less than the intrastate risk underlying its 16.48 percent cost of capital. Id. GCI concludes that Alascom's cost of capital for competitive interstate services was between 13 and 16.48 percent. Id. at 17. GCI states that, in a rate proceeding before the Alaska Commission, Alascom used a 16.48 percent rate of return, based on a cost of debt of 11.46 percent, and a cost of equity of 21.5 percent. GCI Third Reply at 15. Consequently, GCI claims that Alascom did not have an acceptable rate of return in the GSA bid. GCI Supp. Filing at 26.

b. Conclusion

37. This Commission has not directly prescribed a rate of return for Alascom pursuant to Section 205 of the Communications Act, 47 U.S.C. § 205. Our rate integration policy23 indirectly provides Alascom with the AT&T return for MTS and WATS services, but we have not taken any action that directly establishes a rate of return for Alascom interstate private line services. Thus, Alascom's obligation to set just and reasonable rates, under Section 201(b) of the Communications Act, is to target its rates to recover a reasonable rate of return. Defining a reasonable return rate depends on the carrier's cost of capital, which includes elements of the

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23 See Referral of Questions from General Communication, Inc. v. Alascom, Inc., 2 FCC Rcd 6479 (1987).

cost of obtaining debt and equity. Although this Commission prescribed target rates of return for AT&T ranging from 9.5 percent to 12.75 percent during the time period relevant to this dispute,24 these prescriptions do not prove GCI's case. First, any evaluation of a crrier's rate of return depends upon that carrier's particular characteristics and the market circumstances in which it operates. There is no evidence in this record to support a conclusion that an appropriate rate of return for Alascom would have been the same as AT&T's or a local exchange carrier's.

38. Second, the policy that a carrier target its rates to recover a reasonable rate of return does not inevitably require that each rate be targeted to earn the same return for either the service category as a whole, or the firm as a whole. For AT&T, we simply require that it target each of three service categories (private line, MTS, and WATS) to earn no more than its prescribed rate of return. Thus, Alascom's decision to target its GSA rates to earn a rate of return less than the system-wide rate of return does not, by itself, violate the Communications Act or our rules.

39. GCI's argument fails for another reason. We have no requirement that a carrier target its rates to recover the maximum rate of return permitted under our rules. If a carrier, for its own business reasons, targets rates to earn less than the maximum we would not necessarily preclude this exercise of discretion.25 A carrier, of course, must seek to recover its relevant costs, including its costs of obtaining capital. A carrier's decision to target rates to produce a loss or a minimal return might produce a rate that is too low to be just and reasonable under some circumstances. It appears doubtful that a 10 percent return in 1984 would be low enough to cast doubt upon the reasonableness of a rate. A 4 percent return might or might not be unreasonably low. Nevertheless, nothing in this record convinces us that Alascom's use of a 10 percent or 4 percent rate of return in setting its rates would be unlawful under the Communications Act. Therefore, we find against GCI on this point.

40. With respect to GCI's argument that the depreciation reserve used by Alascom unreasonably lowered the rate base to which the rate of return

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24 Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase III, FCC 86-354 (released Aug. 25, 1986).

25 We also cannot decide this issue differently, even if we were to accept GCI's argument that Alascom's cost of obtaining capital for the firm as a whole is 16.48 percent. Because GCI has only made the argument that particular rates within the private line service category were not targeted to recover the firm's cost of capital, we could not on this record resolve this question in GCI's favor.

was applied, we cannot conclude on this record that the calculations were unlawful. We cannot simply agree with GCI that the depreciation reserve factors used for other private line services should be used in computing rates for the GSA service. Under the GSA bid, Alascom had to construct new facilities in some locations to accommodate the GSA traffic. It appears that the Goddard and Edwards stations may have precluded non-GSA usage. Therefore, a different methodology may be justified for the GSA bid than for other private line services. Alascom indicates that it calculated the depreciation reserve on an annual basis over the 10-year life of the contract. Without more, we cannot find in GCI's favor on this issue.

2. Cost of T-streams

a. Contentions of parties

41. Alascom's bid offered a rate of $17,300 per T-stream per month. GCI Request at 11-12. GCI claims that the cost of providing each T-stream was more than $30,000. Id. at 10. GCI quotes a trial deponent as saying that the $17,300 per T-stream price was "well below any other Alascom bid for similar service" that the witness "was aware of during his employment at Alascom." Id. at 12. GCI identifies other high rates for T-streams which Alascom has offered in bids to other government entities as evidence to support its claim.26 Alascom denies that the T-stream rate of $17,300 per circuit for the initial phase of the contract is priced below cost. It argues that the other rates are distinguishable because the GSA bid involved fewer T-streams (we find nine for GSA and nine for Neklasson Lake) and a higher rate of return, Alascom Response at 8-9, and because the other situations involved noncompetitive bids.

b. Conclusion

42. We cannot determine from the record before us that the rate for T-streams of $17,300 was below cost. The only testimony GCI offers to support its argument is from a former Alascom employee, now working for GCI, who asserts that he had never seen a price as low as $17,300 per circuit. A straight comparison of the rates in different contracts does not, by itself, help us to find in GCI's favor. Although the prices are widely divergent, there is no evidence in the record as to what costs were used to compute these other bids or that they offered at all similar facilities or features. Therefore, we can only evaluate the adequacy of the GSA rate by analyzing the underlying costs in providing service pursuant to the GSA contract. We have done so in other sections of this Order. We therefore

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26 GCI states that Alascom charged the Department of Defense over $37,000 each for two comparable T-streams, in a non-competitive bid situation, and provided comparable T-streams for service to the U.S. Air Force at $41,600. Id.

reject this portion of GCI's petition.

3. Transponder costs

a. Contentions of parties

43. GCI asserts that Alascom significantly undervalued its costs for the SATCOM F-5 satellite used to provide GSA service. GCI Supp. Filing at 24. It contends that the cost support materials Alascom submitted with its GSA tariff did not explain the derivation of transponder costs allocated to GSA. Id. GCI states that Alascom calculated per transponder cost for GSA at $1.1 million at the same time that it was leasing four transponders to RCA at the rate of $1.6 million per transponder annually. It also notes that, in 1984, Alascom calculated the per transponder cost at $1.556 million when pricing its intrastate T-1 service. Id. at 24-25.

44. GCI thus concludes that Alascom charged GSA nearly $500,000 annually per transponder less than it charged other private line customers. GCI Third Reply at 19. GCI alleges that the discrepancy between GSA's price ($1.1 million per transponder) and the price for Alascom's intrastate private line customers ($1.556 million per transponder) results from Alascom's manipulating the rate development to conform its satellite costs to the target price Alascom had preselected. Id. It claims that, for the GSA revenue requirement, Alascom subtracted the costs and revenues of the four transponders leased to RCA at $1.6 million each, but that it did not subtract these costs and revenues when it developed its revenue requirement for its intrastate private line customers. Id. at 19.

45. GCI states that the $1.1 million amount is based on Alascom's intrastate rate of return of 11.75 percent; it argues that if the rate of return is increased to 13 percent to reflect the rate of return Alascom usually uses to compute interstate rates, the cost per transponder increases to $1,627,652, a cost comparable to RCA's charge. GCI Supp. Filing at 25. It claims that even calculating the transponder cost using a 10 percent rate of return results in an annual cost per transponder of $1,455,811, proving that Alascom's charge of $1.1 million for the space segment is inadequate. Id.

46. Alascom states that it used a return factor of 13 percent in computing transponder costs for the bid, resulting in approximately a $1.1 million revenue requirement per transponder. Alascom Response to GCI Supp. Filing at 19. Alascom asserts that using the $1.6 million market rate approved by this Commission for each of the four transponders leased to RCA would result in overcharging other users of the satellite. Id. at 19-20. Alascom asserts that exclusion of transponder revenues and costs for leased transponders is consistent with this Commission's separations requirements. Id. at 19.

47. GCI states that Alascom's explanation fails to account for the full discrepancy between $1.1 million per transponder for GSA and $1.556

million per transponder for intrastate private line services because it arises not only from differing depreciation reserves but from disparate rate development processes. GCI Third Reply at 19. It contends that Alascom's methodology to develop intrastate rates did not initially exclude costs and revenues of RCA transponders, and that intrastate rates were computed by removing spare transponder costs that were retained in the revenue requirement used to compute the GSA bid. Id.

48. GCI asserts that Alascom's use of a lower transponder cost lowered Alascom's annual GSA revenue requirement by $450,000. GCI Supp. Filing at 25. GCI states that Alascom allocated the $1.1 million at 69 percent of cost for the initial phase of service and 31 percent for the later phases, using a 10 percent rate of return, resulting in an annual revenue requirement of $761,535. GCI estimates that the annual revenue requirement based on a transponder cost of $1.556 million would be approximately $1,073,640, which would add over 16 percent to the rate for the T-1 circuit offered in Alascom's bid. GCI contends that this forces non-GSA customers to subsidize the costs of the GSA transponder. Id. It estimates alternatively that a 69 percent allocation of the intrastate rate using the higher 13 percent interstate rate of return would result in a cost allocation of $1.123 million, or an increase of 21 percent in the monthly T-1 circuit price.

49. GCI argues that Alascom further improperly lowered the GSA revenue requirement by spreading its per transponder revenue requirement over all of the transponders, including the spares, but that for non-GSA customers it subtracted two spare transponders. GCI Third Reply at 20. It explains that this lowered the cost per transponder for the GSA service. Id. Alascom states that it used a differing depreciation reserve because of the dissimilar revenue requirements. Alascom Response to GCI Supp. Filing at 20. GCI replies that Alascom's explanation does not account for the revenue requirement disparity because it ignores the selective use of the leased and spare transponders in Alascom's rate development processes. GCI Third Reply at 20.

50. Alascom explains that transponder costs used for rate development in its intrastate private line service reflected a 24 percent depreciation reserve, representing the accumulated reserve during the study period multiplied by a typical factor for other rates developed over 12 to 36 months. Alascom Response to GCI Supp. Filing at 20. In contrast, the 111-month contract period of the GSA arrangement warranted averaging satellite costs over the entire expected contract life, requiring a higher depreciation reserve and leading to a lower rate base and lower annual costs. Id. Alascom states that for purposes of argument, it recalculated its transponder costs for GSA by spreading the revenue requirements over 18 rather than 20 transponders, after excluding costs and revenues from the RCA leases. It states that the return remains positive with this assumption. Id.

51. GCI also notes that Alascom failed to include in its GSA bid foreseeable satellite costs such as the cost for the new satellite that would have been required for the later stage of the GSA contract, eight and one-half years into the term of the contract. GCI Third Reply at 20-21.

b. Conclusion

52. On the basis of the record before us, it appears that Alascom undervalued its transponder costs in calculating its GSA bid. Alascom explains that it averaged the costs of the transponders over the life of the entire contract, which led to a lower rate base. Given that even Alascom believed it was likely that GSA would never order additional T-streams in later phases of the contract, we believe Alascom should have allocated more than one-half of its transponder costs to the first nine circuits ordered by GSA. We cannot conclude that 100 percent of these costs should have been allocated since GSA still had an option to purchase nine additional T-1 circuits and there was some possibility that GSA would order some additional circuits. With respect to Alascom spreading transponder costs to include two spare transponders, we are unable to say that this methodology is per se unreasonable. Nevertheless, it is possible that some costs associated with the spare transponders should have been allocated to the GSA service as overhead costs. Because there is no indication in the record that the spare transponders were available as backup transponders for the GSA service or that they were solely reserved for other uses, we are unable to conclude that some portion of the costs of the spare transponders should have been allocated to the GSA service. On the issue of excluding costs and revenues associated with four RCA transponders, GCI has presented no valid reason why this exclusion was improper. We do not believe that the market rate for the four RCA transponders is strictly comparable to those transponder costs allocated to the GSA service. The rates were developed for different situations using different assumptions. In addition, there is no requirement in the Communications Act or our Rules that cost allocations for interstate and intrastate services should be identical. Each allocation must be evaluated in light of its own circumstances.

53. Finally, Alascom does not dispute that it failed to include the costs of deploying an additional satellite eight and one-half years into the contract. We are, however, unable to conclude that any of these costs should have been allocated to any phase of the GSA contract. The deposition testimony quoted by GCI is simply stating that in general satellites have an average life of eight and one-half years. There is no indication in the record whether a new satellite would have to be launched and whether it would replace the existing satellite, or whether some other satellite would be used to provide the GSA service.

4. Costs of Goddard and Edwards stations

a. Contentions of parties

54. GCI attacks Alascom's cost allocations for the RCA Americom facilities at Goddard Space Flight Center and Edwards Air Force Base, claiming that it was incorrect to allocate any portion of these costs to non-GSA traffic. GCI Reply at 10-14. It concludes that there is "no basis" for Alascom's allocation of less than 100 percent of the cost of these facilities to the GSA contract. Id. at 13-14. GCI states that Alascom did not inform this Commission that Alascom had allocated only 44 percent of the costs, excluding 56 percent of the costs, of the Edwards and Goddard facilities, and that its allocation was based on less than all of the non-recurring costs specified in its subcontract with RCA Americom. Id. at 11. GCI contends that Alascom's allocation of Goddard and Edwards costs at 44 percent bears no relation to the capacity potentially available to GSA. Id. at 12. It claims that RCA Americom built the Goddard and Edwards earth stations at Alascom's expense for the GSA service. Id.[27]

55. GCI states that GSA reserved for its future use the total capacity of the Goddard and Edwards stations, GCI Supp. Filing at 18, and claims that Alascom's contract with RCA Americom precluded use of these facilities by non-GSA customers except to the extent GSA declined to exercise its options to use the stations after the initial phase of the contract. GCI Second Reply at 6. GCI points out that the facilities initially constructed at Goddard and Edwards were designed only to provide GSA with its nine initial phase T-1 circuits and that GSA was obligated to purchase all nine. Id. at 7. GCI explains that, with the initial capacity fully utilized by GSA, it was not technically possible to provide service to non-GSA customers during the first two years of the contract or over any of the nine initial circuits during the 10-year life of the contract. Thus, any non-GSA customer using the expanded capacity in later phases would have had to use the same supplemental capacity which GSA had an exclusive right to use in the later years of the contract. Id.[28]

56. GCI notes that Alascom excluded 56 percent of the initial phase costs on the ground that those costs should be allocated to non-GSA customers that Alascom anticipated serving in subsequent phases of the GSA contract. GCI Second Reply at 17. GCI states that Alascom did not allocate

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27 GCI contends that Alascom's ability to use Goddard and Edwards for non-GSA traffic was conditioned upon Alascom and RCA Americom reaching agreement for use of the facilities. Id.

28 GCI asserts that since Alascom's service to GSA began in 1983 only GSA traffic has been routed through the Goddard or Edwards station. GCI Supp. Filing at 13.

the remaining initial phase costs to subsequent phases of the GSA contract. Id. GCI claims that Alascom had no realistic possibility of routing any other traffic through these facilities, that it had never forecast the use of these facilities for non-GSA traffic, and that it has never routed non-GSA traffic through these facilities. GCI Third Reply at 1-2. GCI further argues that Alascom should have allocated 100 percent of these facilities to GSA because: (1) Americom never deviated from its position that only GSA traffic would be routed through its stations;29 and (2) Alascom's internal cost and pricing documents reveal that Alascom experimented with its allocation figures to determine which allocation level produced the target price. Id. at 9-10.

57. GCI alleges that Alascom's Section 61.38 cost support data contain only the allocated portion of the costs, not the total costs from which they are derived. GCI Reply at 11. GCI claims that the total capital costs which Alascom used as the basis for its allocation were $1,080,000 for the Goddard earth station and $1,175,000 for the Edwards earth station. Id.30 It claims that if Alascom had disclosed the full costs of the Americom subcontract, the capital costs of the initial phase of the GSA contract would have increased by over $1,690,000, or 47 percent. Id. at 11-12.

58. Alascom states that the allocations of Goddard and Edwards costs were based on "good faith business judgments" in the belief that additional customers would be served from those facilities. Alascom Supp. Response at 6. It assumed that GSA would not exercise its option for more than nine initial T-1 circuits and did not allocate 100 percent of the facilities to GSA because the agreement provided that GSA could choose not to exercise its option to order additional circuits during later phases of the contract. Id. at 7. Alascom explains that its agreement with RCA Americom did not preclude Alascom from routing non-GSA traffic through the Goddard and Edwards stations, and that Alascom's management had a good faith belief that renegotiation for additional traffic was possible. Alascom Response to GCI Supp. Filing at 14.31

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29 GCI states that Alascom improperly allocated costs to the Goddard and Edwards facilities and to the Vashon earth station for the government's Autovon traffic. It argues that this traffic could be routed through only one facility, and that it was in fact routed through the North Bend station. GCI Supp. Filing at 16.

30 GCI claims that Alascom identified costs for Goddard as $475,200 and costs for Edwards as $517,440. See Alascom Tariff Tr. No. 215, Att. A.

31 Alascom claims that correspondence confirms its good faith belief in possible continued negotiations on a number of issues with RCA. Alascom Supp. Response at 7.

59. GCI claims that it has disproven Alascom's asserted "good faith" in calculating the costs of these facilities. GCI Supp. Filing at 10. GCI asserts that documents produced during discovery show that, before Alascom filed its tariff, it projected that only GSA traffic would be routed through these stations through 1987. Id. GCI states that Alascom has not provided support for its good faith belief that it could renegotiate with Americom for additional traffic through these facilities. Id. at 11.

b. Conclusion

60. We have concluded that Alascom should have allocated at least 50 percent of the costs of the Goddard and Edwards stations to the GSA contract because Alascom could not be certain that it would be able to renegotiate its existing subcontract with RCA Americom for the Goddard and Edwards stations. Subsequent events have borne this out, for although Alascom has sought such a renegotiation, Americom has never agreed. Moreover, it appears that Alascom's allocation to GSA service was not based on a projection of use by other customers.32 In short, it is difficult to find in this record any substantial basis for Alascom's business judgment that these facilities eventually would be used for non-GSA traffic.33

61. Notwithstanding this conclusion, we cannot conclude that 100 percent of the costs should have been allocated to the first nine circuits ordered by GSA. The contract itself indicates that there was some possibility, subject to availability of capacity, that non-GSA traffic could

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32 We note that Alascom contradicts itself at several points when it argues that a less-than-100 percent cost allocation was used for the initial nine circuits (1) because GSA had an option on nine additional circuits and that, therefore, some of the costs should be allocated to the additional circuits; and (2) because it knew from the start that GSA would not exercise its option for additional circuits and that, therefore, the excess capacity could be used to serve additional customers. We believe a more rational argument for allocating less than 100 percent of the costs is (1) that there was a slight chance that GSA would exercise its option for at least some additional circuits and (2) that Alascom reasonably might have foreseen that some additional customers could be accommodated on the facilities. Either scenario could support allocating less than 100 percent of the costs, but either theory would be insufficient to allocate only 50 percent of the costs to the GSA contract.

33 We note that Alascom admits that it intended to allocate 50 percent, but actually allocated only 44 percent due to an error in transposing numbers used to compute the allocation.

be routed through these two stations. We have never prohibited a carrier from making allocative judgments based on possibilities less than 100 percent certain. Rather a good faith prediction is sufficient to support a carrier's allocative decision. Thus, although our review of the objective factors leads us to conclude that a 50 percent allocation was too low, a 100 percent allocation is clearly too high. Again, we cannot on the basis of this record definitively state where, between 50 percent and 100 percent, the proper allocation lies.

5. Anchorage and Juneau earth stations

a. Contentions of parties

62. GCI claims that Alascom does not disclose in its Section 61.38 data its basis for cost allocations for the Anchorage and Juneau earth stations. GCI Reply at 16. It claims that the tariff support materials identify $1,211,711 in capital costs for Anchorage, of which $216,336 are allocated costs. Id. at 17. GCI states that the support materials contain an entry of $162,000 for a microwave link but contain no entry to explain the remainder of the allocated costs. Id. at 16. GCI claims that capital costs for the Juneau station are $501,421, of which $25,788 are allocated costs, but it finds no such entry in Alascom's internal cost summary or in its Section 61.38 cost support data. Id. at 16-17.

63. GCI contends that Alascom concealed from this Commission the common and joint costs associated with the Anchorage and Juneau stations. GCI Third Reply at 2. GCI argues that discovery shows that Alascom did not include or disclose the common and joint costs at the Anchorage and Juneau stations and the costs of land, building, general plant, administrative, and general items. Id. at 8.

b. Conclusion

64. Alascom does not dispute GCI's contentions regarding the Anchorage and Juneau stations. Alascom should have included a reasonable portion of overhead costs in pricing the GSA bid. Because there is no evidence in the record as to what those costs are, we cannot state what a proper allocation would be.

D. Costs of Vashon Island station

1. Contentions of parties

65. Question 3(c)(i) of the Court's referral Order asks this Commission to determine the total costs of the Vashon Island earth station facility and other facilities used in providing the GSA service, including direct and indirect costs. GCI states that the total actual construction cost of the Vashon Island station was $3,818,589. GCI Reply at 15 n.6. GCI claims that Alascom's figures show that the station's budgeted cost was

$4,017,134.34 Alascom states that the booked cost of the station is $4,582,000. Alascom Response to GCI Supp. Filing at 19.

66. We discuss Questions 3(c)(ii) and 3(c)(iii) of the referral Order together. Question 3(c)(ii) asks what provisions of the Communications Act and which Commission Rules and policies govern the allocation of the Vashon Island costs between the GSA service and other services. Question 3(c)(iii) asks for the proper allocation of Vashon Island costs between the GSA service and other services under the Communications Act and this Commission's Rules and policies.

67. GCI asserts that Alascom failed to disclose in its tariff support materials that it intended to build a huge earth station at Seattle (Vashon Island) with massive unused capacity, or that it allocated only 10 percent of the Vashon Island station's costs to GSA. GCI Second Reply at 10. GCI submits that 100 percent of this station's costs should have been allocated to the GSA service. GCI Supp. Filing at 19-21. It asserts that Alascom originally planned to use the hypothetical facility at North Bend to provide service to GSA, but that by the final version of the bid, it had decided to use the Vashon Island station. GCI Second Reply at 10.

68. GCI states that Alascom's GSA bid and Section 61.38 filing identify the capital costs incurred at Seattle as $902,577. GCI Reply at 14. GCI contends that the earth station that was actually built at Seattle was a scaled-down facility which was built for GSA, and that all of its costs should have been allocated to GSA. GCI Supp. Filing at 21-22.35 Alternatively, GCI argues that, if Alascom could justify using the North Bend station cost rather than the Vashon Island costs, the allocation should have been based on $2.2 million. Id. at 20-21. GCI contends that the projected cost of the North Bend facility was $2,226,506. Id. at 20. GCI claims that by the time Alascom's tariff was filed, Alascom had spent over $2 million and had budgeted over $4 million for the Vashon Island station. GCI Third Reply at 18. GCI asserts that Alascom spent over $4.5 million to construct the Vashon Island earth station for the GSA service. Id. at 2.

69. GCI states that Alascom allocated the equivalent of approximately 10 percent ($450,000) of the Vashon Island station costs to the GSA contract. Id. at 21. GCI alleges that Alascom does not account for the difference between the $450,000 allocated to the GSA contract and the $4,017,134 budgeted for construction of the station. GCI Reply at 16. It

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34 See GCI Reply, Att. E.

35 GCI argues that because the facility was scaled down, the minimum cost attributable to GSA would have been $2,695,000, based on an allocation of $5.39 million originally anticipated to construct the facility. Id. at 22.

asserts that Alascom did not explain the basis for allocating the hypothetical earth station costs at 50 percent of the total actual costs of the hypothetical North Bend facility. Id. at 16.

70. GCI contends that the Vashon Island station was built for GSA because the contract required an earth station in the Seattle area, GCI Second Reply at 10, and Alascom had no earth station in Seattle. GCI Reply at 15. GCI states that Alascom has not supplied forecasting data which identify non-GSA traffic that would produce revenue over that facility. GCI Supp. Filing at 22. GCI presumes that Alascom used the hypothetical earth station to shift 90 percent of the costs at Vashon Island to its interstate services. GCI Third Reply at 17.

71. Alascom believes that any allocation for Vashon Island would have been an "arbitrary percentage of that facility's costs." Alascom Supp. Response at 9. Alascom claims that using the costs of the North Bend surrogate station was appropriate because its management decided to build the Vashon Island station as a major gateway facility, with capacity far in excess of GSA needs. Id. Alascom states that the GSA service uses a "small fraction" of the capacity of the Vashon Island station. Id. at 8. Alascom explains that its allocation of only a portion of the hypothetical North Bend station's costs to GSA was reasonable because the North Bend facility was intended to provide transmission capability exceeding GSA needs. Alascom Response to GCI Supp. Filing at 15-16. Alascom states further that the 13-meter antenna and electronics procured for the North Bend facility were to be used to build the gateway station on Vashon Island. Id. at 15. GCI argues that Alascom's designation of the station as a "gateway" station does not justify ignoring the actual costs of constructing the facility. GCI Third Reply at 18.

72. Alascom asserts that it based its allocation of Vashon Island costs on a 1982 estimate of $900,000 for the North Bend earth station, which initially was planned to provide three T-streams for Defense Department Autovon traffic. Alascom Response to GCI Supp. Filing at 15. Alascom believes that the actual costs of constructing North Bend confirm the reasonableness of its allocation. Id. at 16.36 Alascom maintains that since the cost of the North Bend facility was $650,000 excluding electronics equipment, its allocation of $900,000 to approximate the cost of a nine-meter stand-alone facility, without electronics, was "very generous." Id.

73. Alascom claims that it anticipated using the Vashon Island facility for traffic of AlaskaNet, West Coast/Seattle video feeds, Alaska

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36 Alascom notes that the North Bend station, ultimately constructed as a nine-meter facility to handle three T-streams of Autovon traffic for the Defense Department, has been in operation since 1985. Id.

broadcasters, ECOM, non-GSA private line service, Audio Group, and for teleconferencing, message traffic, corporate network traffic, and specialized common carrier traffic. Alascom Response to GCI Supp. Filing at 15.37 GCI contends that the engineering notice that Alascom uses to support non-GSA traffic forecasts is not a forecast but merely a list of types of service that the station is technically capable of accommodating, and that this does not justify allocating over $4 million to other services. GCI Third Reply at 18. GCI notes that Alascom's claims of anticipated MTS traffic contradict Alascom's claim that the Vashon Island facility is dedicated to private line service. Id. at 18-19.

74. GCI states that Alascom planned to allocate 100 percent of the costs of the hypothetical North Bend earth station to GSA over the life of the contract. GCI Supp. Filing at 23. It argues that Alascom treated the costs of the surrogate station as if they were not incurred until GSA exercised its right to additional T-streams in later phases of the contract. Id. at 23-24.38 It claims that a decision by GSA not to exercise its options could not have lowered Alascom's cost per circuit and so could not justify the prospective exclusion of those costs from the initial computation of costs and rates to GSA. Id. at 8. GCI asserts that the full costs attributable to the facility's capacity should have been used to determine per-circuit costs and rates for the GSA contract and the related tariff. Id.

75. GCI contends that Alascom does not explain the $232,491 identified as the capital cost of the additional circuits for which GSA had options in the 25th and 43rd months of the contract. GCI asserts that this leaves unexplained the costs for half of the circuits provided under the GSA contract. Id. at 17.39

76. Alascom states that its initial projection that GSA would require two T-streams to Seattle has in reality never been exceeded, and current utilization of Vashon Island entails 178 channels, of which 48 are assigned to GSA, confirming the reasonableness of initially allocating half of the

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37 Alascom claims that every trial witness agrees that this station was built to handle traffic substantially in excess of GSA requirements. Id.

38 GCI notes the inconsistency in Alascom's statement that it based its allocation at the Goddard and Edwards facilities on the assumption that GSA would not exercise its options in later phases. Id. at 24.

39 We infer from the record that Alascom based its calculations on the assumption that it would allocate costs for the other half of the circuits which GSA might order during later phases of the GSA contract.

North Bend costs to non-GSA traffic. Alascom Response to GCI Supp. Filing at 17. Alascom asserts that since its actual operating experience shows that GSA used less than 50 percent of the capacity of Vashon Island, it over-allocated costs to the GSA service, and any error worked to Alascom's detriment. Id. at 18.40 GCI states that in 1983, 93 percent of the traffic using this facility was GSA traffic; in 1984, 49 percent was GSA traffic; and in 1985, 64 percent was GSA traffic. GCI Supp. Filing at 20. It claims that 36 of the 40 circuits provided through Vashon Island in 1983 were GSA circuits. GCI Second Reply at 10. In 1984, GSA accounted for 48 of 98 available circuits, and in 1985, it accounted for 48 of 75 circuits. Id.

2. Conclusion

77. Under Section 61.38 of the Rules, Alascom should have developed the GSA cost support on the basis of some reasonable allocation method consistent with its actual facility commitments and realistic prospects for their use. We conclude that either using a stand-alone facility (North Bend) or shared use of a single facility (Vashon Island) is in concept an acceptable approach. However, use of the actual facility to be deployed coupled with a reasonable market forecast is the preferred approach.

78. Alascom did not undertake a market forecast or assessment of potential demand. Apart from its statement to the effect that the Vashon Island station was built to handle traffic substantially in excess of GSA requirements -- a proposition inarguable from the technical capacity at Vashon -- Alascom's allocation of capital costs to the GSA bid was based on the costs of North Bend apparently without comparing the costs of the larger Vashon Island facility under construction when the GSA tariff was filed. This allocation based on a hypothetical facility might have warranted clarification in the tariff review process had the facts established in the referral proceeding been presented to this Commission when the original tariff was filed.

79. We conclude that, even if the 50 percent allocation of North Bend's cost were proper based on the expectation that the excess capacity would be used by other customers, the factor should be applied to the $2.2 million cost of the original North Bend station. The argument that Alascom later scaled down the size of the North Bend station, which actually cost

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40 Alascom contends that its subsequent reallocation of Vashon Island costs is as defensible as its original allocation. Id. Alascom expects to reconfigure its network so that the MTS traffic that it currently handles at AT&T's Three Peaks facility will be routed through Alascom's Vashon Island station, requiring an additional $866,000 investment. Id. It intends to allocate to GSA 48 of 1440 circuits, or 3.4 percent. Id. at 19. The GSA allocation of the total facility cost of $5,389,000 would be $183,237. Id.

closer to the $900,000 figure used to allocate Vashon Island costs, does not enlighten this murky question. Alascom does not explain when during the bidding process it scaled down the size of the North Bend station or how this smaller size affected the estimated use of that facility by non-GSA customers. The pleadings in this proceeding demonstrate that the allocation Alascom devised for the Vashon Island facility investment is not a reasonable allocation. The record does not provide a sufficient basis for determining the allocation that should have been used.

E. Commission Ruling on Cost Justification

80. Question 4 of the Court's Referral Order asks this Commission whether it has ruled on Alascom's proposed private line service tariff and its accompanying cost justification materials for various pricing schedules and short-haul and longer distance channels.

81. This Commission did not reject the tariff or the cost support materials submitted in connection with the GSA service; that tariff became effective without opposition.41 The tariff rejection to which GCI refers (Transmittal No. 244) did not affect the GSA service.42 GCI appears to argue that the Common Carrier Bureau's subsequent rejection of Alascom's proposed revisions to its general private line offering, Transmittal No. 244, implied a corresponding rejection of the cost support materials filed with Alascom's Transmittal No. 215 related to GSA service. There is no basis for that inference and we refuse to grant this requested ruling. The ruling on Transmittal No. 244 has no bearing on the adequacy of the cost support materials filed with Transmittal No. 215. Nevertheless, because the Bureau's rejection of the subsequent filing illumines the tariff review process, we discuss it briefly.43

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41 Alascom Tariff F.C.C. No. 1, Transmittal No. 215 (filed May 9, 1983).

42 Alascom Inc. Tariff F.C.C. No. 7, Private Line Service (Transmittal No. 244) (released June 18, 1984). Alascom proposed rates under Tr. No. 244 for customer specified terrestrial service declining from $8.05 per mile for the first 250 miles to $1.15 per mile for miles above 500. The Section 61.38 data, however, showed an average cost per mile which did not vary with distance. The Bureau rejected the tariff, finding that no support was given for the extreme differences between short-haul and longer distance channel charges.

43 No purpose would be served by an extended comparison of these two proceedings, but a copy of the Bureau's decision in Transmittal No. 244 is attached as an Appendix as a representative example of this Commission's approach to deficiencies in cost support materials when raised during the initial review of proposed revisions.

82. In regard to Transmittal No. 244, the Common Carrier Bureau found that Alascom chose a study methodology to develop termination charges that would yield the desired result but that the underlying methodological assumptions were not justified. The Bureau did not make an affirmative ruling on what would be "adequate" cost justification material for various pricing schedules and short-haul and longer distance channels. Rather, because the Bureau found that Alascom had not justified the proposed revisions based on the specific information provided to support them, it determined that requiring Alascom to develop a new method would be preferable to an investigation of the deficient cost support. That finding was very narrow -- the Bureau rejected the tariff because the cost data did not support the proposed rate structure or level, and the methodology used in the study for the termination charges was seriously flawed. Transmittal No. 244 was thus rejected in a different context than the GSA bid.

III. CONCLUSION AND ORDERING CLAUSES

83. Although we have found that some of Alascom's allocations were not proper, some were inadequately justified and thus suspect, and others were proper, we cannot conclude on the basis of this record what a final cost-justified bid price should have been or whether GCI would have won the bid if Alascom had based its bid on proper allocations.

84. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), and Section 1.2 of this Commission's Rules, 47 C.F.R. § 1.2, that the captioned requests for declaratory rulings of General Communication, Incorporated ARE GRANTED to the extent reflected herein and otherwise ARE DENIED.

85. IT IS FURTHER ORDERED that GCI's Request To Reopen the Record in this proceeding is DISMISSED.44

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44 GCI Motion To Reopen the Record (filed Dec. 23, 1987). We also decline to consider Alascom's Opposition to Reopening the Record (filed Dec. 31, 1987) and GCI's Reply to Alascom's Opposition (filed Jan. 13, 1988).

86. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order be transmitted to the Honorable John C. Coughenour, Judge, United States District Court for the Western District of Washington.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Attachment

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
ALASCOM, INC.	)	Transmittal No. 244
Tariff F.C.C. NO. 7	)	
Private Line Service	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 1984 ; Released: June 18, 1984

By the Chief, Common Carrier Bureau:

1. Alascom, Inc. has proposed a new Private Line Service tariff, F.C.C. No. 7, which would replace the Series 2000 and 3000 private line channel offerings now covered under its Tariff F.C.C No. 1. These private line offerings provide nominal 4 khz (voice grade) channels for voice, data and other uses. Customers may obtain channels under the present and proposed tariffs for service between points in Alaska and other states, and between points within Alaska where such service is jurisdictionally interstate.

2. The changes proposed in Tariff No. 7 would affect both the level and the structure of voice private line channel rates. Under the present tariff, jurisdictionally interstate channels between points within Alaska are priced under a mileage sensitive rate structure which varies in three steps from $3.50 per mile for the first 250 miles to $2.80 per mile for each mile over 500. For service between the continental U.S. (CONUS) and Alaska, customers may obtain either a satellite channel at a flat monthly rate of $2,700 or a terrestrial channel routed in part via Canada and terminating at the CONUS carrier's point of connection in the CONUS for a flat monthly rate of $2,530. In addition to the monthly rate, the intra-Alaska rate schedule applies for the channel link between a customer's location and a satellite gateway city or to a specified terrestrial facility termination point within Alaska.

3. Under the proposed rate strucrue, however, the per month flat charges for Alaska-CONUS satellite and trans-Canada terrestrial channels would no longer apply. Instead, all intercity channel rates would become mileage sensitive, with the rates per mile decreasing in the same three mileage bands as under current tariffs (i.e., below 250, 250-500, 500+). Moreover, a "premium" rate applies in cases where the customer specifies terrestrial routing for a given circuit. For customer specified intra-Alaska terrestrial or trans-Canada terrestrial routing, for example, the charge would be $8.05 per mile for the first 250 miles, $2.00 per mile for the next 250 miles, and $1.15 for each mile over 500. For all other service (e.g., Alaska-CONUS satellite channels or intra-Alaska terrestrial or satellite channels where the choice of routing is at the discretion of Alascom) the rate would be significantly lower: $4.60 per mile for the first 250 miles, $1.50 per mile for the next 250 miles and $.65 per mile thereafter.[1]

4. In addition, a new "channel termination" rate element would be added. This would apply a monthly charge of either $60 or $180 at each end of a private line channel. The level of the charge would depend on whether the customer's termination point is at or near a major facility location. That is, the tariff would classify certain major cities and company locations as type "A" locations. Customers terminating service in these areas would pay the lower rate. All other locations are designated as type "B," and customers terminating service in these areas would pay the higher rate.

5. Our review of Alascom's proposed Tariff F.C.C. No. 7 reveals substantial deficiencies in the cost support material filed with the tariff. The proposed rate structure would result in unsupported increases in short-haul channel rates and in rates for channels that terminate in less populated areas. Further, the supporting justification fails in all respects to support or even put forth a rationale for the reclassification of rates for private line channels. Finally, the tariff is ambiguous as to how the proposed channel schedule would apply to certain interstate private line channels. For these reasons, we reject the proposed tariff offering.

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1 According to the tariff, the premium rate schedule is designated as "Trans-Canada" terrestrial service. The cost support material filed with the tariff makes clear, however, that these rates would apply whenever a customer specifies terrestrial routing, even when the service is provided wholly within Alaska.

DISCUSSION

6. As noted above, the proposed rates for customer specified terrestrial service would vary from $8.05 per mile for the first 250 miles to $1.15 per mile for miles above 500. Alascom's cost data, however, show average rates per mile which do not vary with distance; (i.e. $1.06 per mile for channels leased from the Canadian telephone company and $3.026 per mile for channels supplied by Alascom itself). No cost data is given that would support the radical variation in rates for customer-specified terrestrial service, nor the extreme difference between rates for short-haul and longer distance channels.

7. The premium rates for customer-specified terrestrial routing are distinguished, according to Alascom, on the basis that so-called Trans-Canada terrestrial routing utilizes terrestrial routing only, while other channels may use either satellite or terrestrial facilities. This segmented rate structure is ambiguous, however, and may lead to unreasonable discrimination. For example, if a customer merely orders jurisdictionally interstate service between two points in Alaska, without specifying the types of transmission facilities to be used, the lower rate applies, even though the circuit may consist entirely of terrestrial facilities (at Alascom's option). If the customer specifies terrestrial routing, however, the higher "Trans-Canada" rate applies even though the same service is provided in either case.

8. This constitutes an unreasonable rate classification scheme under Section 201(b) of the Communication Act, 47 U.S.C. § 201(b). Services may be classified separately where differences in service attributes are clearly shown. Here, there is no showing that the services are distinct other than on the basis of differences in routing. [2] If Alascom wishes to show different rates for the same service reflecting differences in costs, it may do so in several ways. For example, it can continue to offer channels as it now does; i.e., by allowing customers to choose satellite or terrestrial transmission facilities. Also, it can deaverage rates on a specific city-to-city basis if it can show that the city-to-city facility costs are different and if it can support each separate city pair route on the basis of separate allocations of costs by route. Third, it can pass through any costs for channels obtained under lease from the Canadian company when customers specify that they desire terrestrial routing where Alascom can provide satellite only. In other words, discrimination in rates for the same service would not be unreasonble where supporting cost differences are

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2 If a customer orders a voice grade private line service between Anchorage and Juneau in Alaska, the service is the same regardless of how the channel is physically routed.

shown and customers cannot be charged different rates for the same service simply because the carrier, rather than the customer, decides to route one customer's service differently where two rate alternatives exist.

9. We also find that the different termination charges of $60 per month for "A" city terminations and $180 per month for "B" city terminations are not fully cost supported. Alascom developed these different rates by classifying 284 facility locations into three categories: switching centers and major earth stations, mid-sized and small earth stations, and microwave locations. 3 Using regression analysis to estimate investment per terminating circuit, large switching centers and major earth stations were found to have a weighted average investment of $3,247 per channel termination, while mid-size and small earth stations were found to have a weighted average investment of $3,828 per channel termination. Microwave facilities, the third category, were said to have a weighted average investment of $5,353 per circuit termination.

10. After developing these separate figures, Alascom combined the second and third categories (mid-sized and small earth stations and microwave) to arrive at a composite "cost" for city "B" terminations that is three times the rate for city "A" terminations. For a number of reasons, this analysis is flawed. To begin with, Alascom did not adequately define the criteria used for segregating termination locations into types "A" and "B." Instead, it simply chose to designate switching centers and large earth stations as a particular category, stating that these facilities were "expected" to exhibit lower unit costs. This expectation was "based upon anticipated economies of scale and on lower installation costs resulting from proximity to urban centers."4 While it may be true that investment per termination at some large switching centers is less than equivalent investment at small earth stations, Alascom's analysis cannot validly demonstrate this because it essentially begins with its own conclusion. There is nothing to show, for example, that other systems of classification would be more or less valid. Instead, Alascom apparently chose its categories in a manner that would yield a desired result, not necessarily the best or most accurate result.5 No matter how detailed the cost analysis that flows from this study, it cannot be used to show that a rate

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3 Alascom claims that these categories reflect a "natural taxonomy" of facilities. Supplementary comments of Alascom at 4.

4 Id.

5 Furthermore, it appears that Alascom has assumed that all other cost elements vary with investment, an assumption that Alascom has demonstrated only with respect to maintenance expenses.

classification is reasonable because the underlying assumptions are not justified.

11. Even accepting Alascom's three-tier classification system, there is no basis supplied for Alascom's creation of a "composite" category that aggregates the costs of mid-sized and small earth stations with microwave facilities. For example, the cost differential between satellite earth stations (regardless of size) and microwave facilities appears to be far greater than the difference between large earth stations and mid-sized earth stations. From this it appears that it would have been equally reasonable to construct a dual rate structure based on differences in cost between satellite technology and microwave technology, regardless of geographic location. Having no defined criteria for its initial selection of facility categories, however, Alascom simply combined the costs for mid-sized and small earth stations within type "B," even though that classification could as well have been made within type "A."

12. For these reasons, we find that Alascom has not justified the wide disparity in rates that this classification scheme would impose upon customers. Within type "B" locations, for example, there appears to be extensive variations in the cost of facilities employed.[6] Yet, a customer with service terminating at a satellite earth station located in a type "B" location would pay a substantially higher rate than a microwave customer located in a type "A" location, even though in individual cases the cost of serving the satellite customer might be considerably less than the cost of serving a microwave customer located in the type "A" city. Although it may be reasonable, in some circumstances, for a carrier to deaverage its rates based on classification of customers, Alascom's bifurcated structure clearly fails to rationally explain the criteria for distinguishing between type "A" and type "B" customers, and would appear to result in significant unjustified discrimination in rates between customers located in urban areas and those located in less populated sections of the state.

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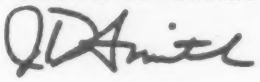
6 There may be similar variations within type "A" facility costs as well. Alascom has not provided data on each of the locations in this category, however, so we cannot be certain of the extent of these variations.

13. In view of the substantial deficiencies in the cost data submitted with the proposed tariff, and Alascom's complete failure to justify the classification and structural scheme of the tariff, we believe little purpose would be served by an investigation. Rather, we believe that the proper course is to reject for lack of usable 61.38 support data and allow the carrier to refile tariffs and support material with a format and rate structure that addresses the concerns we have outlined in this order.

14. Accordingly, IT IS ORDERED that the tariff material filed by Alascom, Inc. under Transmittal No. 244 IS REJECTED.

15. IT IS FURTHER ORDERED that this order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION



Jack D. Smith
Chief, Common Carrier Bureau

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 88-36
37285

In the Matter of	)	
	)	
Draft International Telecommunication Regulations to be considered by the World Administrative Telegraph and Telephone Conference (WATTC-88)	)	CC Docket No. 88-55

NOTICE OF INQUIRY

Adopted: February 2, 1988; Released: February 9, 1988

By the Commission:

I. INTRODUCTION

1. This proceeding is prompted by concerns that the general public, particularly U.S. users and companies interested in the provision of telecommunications services and associated telecommunications equipment, may not be fully aware of the upcoming World Administrative Telegraph and Telephone Conference (WATTC) in 1988. The United States, both government and industry, has been an active participant in the meetings of the Preparatory Committee for this conference (PC/WATTC).[1] However, now that the PC/WATTC has issued its Final Report containing draft International Telecommunication Regulations and comments of several administrations regarding the general philosophy applied by the PC/WATTC during its work, we believe that this matter should be as widely disseminated within the U.S. as possible. The Commission's general goal is to eliminate unnecessary

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1 The PC/WATTC was formed via Resolution No. 15 of the VIIIth Plenary Assembly of the International Telegraph and Telephone Consultative Committee (VIIIth CCITT Plenary Assembly, Malaga-Torremolinos, 1984). As one of the permanent organs of the ITU, the CCITT develops international technical standards and service recommendations to facilitate communications between Member countries. The PC/WATTC was to exist during the 1985-1988 Plenary Period to prepare proposals regarding revision of the International Telegraph and Telephone Regulations.

regulatory burdens on telecommunications services and service providers where feasible, with a further goal to protect and promote the interests of the American pubic in international communications. In furtherance of these goals, the Commission is issuing this Notice of Inquiry to inform those companies and individuals who may not have been fully cognizant of the WATTC effort internationally and within the U.S., as well as to provide an opportunity for comment on the draft International Telecommunication Regulations and the Final Report of the PC/WATTC. Since the deadline for Administrations' submissions to the WATTC is relatively close (Spring 1988) and a government/industry planning group on WATTC preparations already exists within the framework of the U.S./CCITT National Committee's Study Group B, we do not intend to establish a formal FCC Advisory Committee for WATTC. However, it is intended that information developed within this proceeding, and any conclusions drawn therefrom, will be made available to the preparatory process of the U.S. WATTC Delegation.

II. BACKGROUND

2. The International Telecommunication Union (ITU) is the world's oldest international, intergovernmental organization. Formed in 1865 as the International Telegraph Union, it dealt solely with telegraph matters until the early 1900's when emerging technologies dictated coverage of radio and telephone matters on an international scale. The present day ITU was first instituted in the Atlantic City Conference of 1947, at which time the ITU became "recognized" as the United Nations specialized agency responsible for international telecommunications matters. The United States is one of 162 Member countries currently in the ITU, having ratified the International Telecommunication Convention[2] along with the current Administrative Regulations (all treaty instruments under United States Law): Telegraph Regulations; Telephone Regulations; Radio Regulations; and Additional Radio Regulations. These Administrative Regulations are modified, revised and/or amended through World Administrative Conferences of the ITU on a periodic basis. The latest World Administrative Telegraph and Telephone Conference, held in Geneva, Switzerland in 1973, produced the current Telegraph Regulations and Telephone Regulations.[3]

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2 International Telecommunication Convention (Nairobi, 1982). [Hereinafter cited as ITU Convention].

3 The current Regulations, along with the Final Protocol, Resolutions, Recommendations and Opinions of the 1973 conference are contained in Final Acts of the World Administrative Telegraph and Telephone Conference (Geneva, 1973).

3. Under Resolution No. 1 and Resolution No. 10 of the ITU Convention it was decided that a World Administrative Telegraph and Telephone Conference (WATTC-88) would be convened immediately following the IXth CCITT Plenary Assembly.[4] Recognizing that the new telecommunications services had been and would continue to be introduced as a result of recent technological developments, that the existing Telegraph Regulations dealt mainly with international telegram service, and that the existing Telephone Regulations dealt only with international telephone service, WATTC-88 is "... to consider proposals for a new regulatory framework to cater for the new situation in the field of new telecommunication services."[5] Toward that end, the CCITT was instructed to develop proposals for consideration by WATTC-88, which has resulted in the Final Report of the PC/WATTC described above.

4. The PC/WATTC held four meetings during the 1985-1987 time frame to develop its proposals. The United States preparatory activities for this effort were under the auspices of the U.S./CCITT National Committee and its Study Group B, jointly chaired by a government official and private sector individual.[6] United States written contributions, positions and general strategy for the PC/WATTC were the result of joint government/industry participation in the several meetings of Study Group B prior to each meeting of the PC/WATTC. In order to encourage wider

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4 At the invitation of the Australian Government, the IXth CCITT Plenary Assembly is scheduled to be held in Melbourne, Australia, during the period November 14 through November 25, 1988. WATTC-88 will be held at the same site during the period November 28 through December 9, 1988.

5 ITU Convention, Resolution No. 10, resolves.

6 United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT), chartered under the provisions of the Federal Advisory Committee Act (Public Law 92-463) and established under authority of 22 USC 2656 in 1977. The meetings of the U.S./CCITT National Committee and its Study Groups are generally open to the public, with participation by government employees and private sector individuals interested in international telecommunications matters. Study Group B is jointly chaired by the Assistant Bureau Chief/International of the FCC's Common Carrier Bureau and the Director for Telecommunications Policies of the Control Data Corporation (CDC).

participation in the U.S. preparatory effort for PC/WATTC, to provide a focal point for information and at the recommendation of the Co-Chairman of Study Group B, an informal Public File for WATTC materials was established by the Commission.[7] In general, the United States consensus position during meetings of the PC/WATTC stressed flexibility, accommodation of changes in international public telecommunications services without the need for frequent regulatory revision, minimization of special provisions and facilitating adoption of any new International Regulations by Member countries.

5. The PC/WATTC held its final meeting in Geneva on 27 April through May 1, 1987. The Final Report on all the activities of the PC/WATTC was published and released by the CCITT Secretariat in November, 1987, when it was distributed via CCITT Circular No. 67. A complete copy of this Circular is appended to the instant Notice of Inquiry for purposes of information and comment by interested individuals.

III. DISCUSSION

6. The Final Report of the PC/WATTC provides a brief narrative on the work of the group and certain problem areas encountered in developing the proposed draft International Telecommunication Regulations. The reports from the individual PC/WATTC meetings cited in the Final Report show the progressive status of the work and the evolution of the draft.[8] While the intent of PC/WATTC was to develop a draft that would be a single set of Regulations to encompass all international telecommunications services, and a single set was developed, it became clear that the participants in PC/WATTC did not agree on all matters. As indicated in paragraph 3.4.2 of

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7 The informal Public File entitled "Comments Regarding a United States Position for the Revision of the International Telegraph and Telephone Regulations of the International Telecommunication Union" was announced by Public Notice (Report No. I-5083) dated July 25, 1986. The Public Notice outlined the work of Study Group B and of the PC/WATTC up to that point. The informal public file resides in the Common Carrier Bureau International Public Reference Room, Room 533, 1919 M St., N.W., Washington, D.C. 20554 and contains copies of: PC/WATTC background materials; Reports on PC/WATTC meetings; minutes of Study Group B meetings; U.S. contributions to PC/WATTC; comments from interested groups and individuals; and other related materials.

8 Copies of these reports are included in the Commission's informal Public File for WATTC materials.

the Final Report, most participants recognized the need for flexibility to encourage full development of new technologies and services; however, there was disagreement as to the degree of flexibility and liberalization. We believe it fair to characterize one view (held by the U.S. and several other countries) as favoring a substantial degree of flexibility and liberalization in international telecommunications regulations and the development of a competitive environment. On the other hand, the opposing view (held by many PTTs[9]) favored a more traditional regulatory approach, with possibly some degree of liberalization, but expanding the applicability of international regulations to all types of service providers.

7. As the Final Report indicates, the crux of the more contentious issues taking the time of the PC/WATTC fell into five areas:

(1) To whom should the Regulations apply? Many of the traditional PTT administrations advocated application of any new International Telecommunication Regulations to "any entity" offering an international service, including suppliers of value-added services. The U.S. and several other administrations advocated application only to administrations and to recognized private operating agencies (RPOAs). Application of the regulations beyond administrations and RPOAs would neither accommodate diverse national policies nor encourage continued efficient evolutional of international telecommunications and might subject some U.S. companies to international regulation where they were not subject to national regulation.

(2) Which services should be regulated? Most PTT administrations favored strict regulation of all international telecommunication services. The U.S. advocated application only to services "offered to the public" and not to private networks or to value-added services or networks. The regulation of other than "traditional" types of telecommunications services (vis-a-vis non-telecommunications services such as data processing) would not provide sufficient flexibility to encourage development and provision of new technologies to all telecommunications users. Difficulties in delineating the scope of the term "public" and in establishing a boundary between "conventional" and "value-added" services led the PC/WATTC to adopt ambiguous language in Article 1

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9 PTTs are the Administrations of Posts, Telegraph and Telephone which are government-owned/operated communications entities responsible for providing communications services in most other countries, usually on a monopoly basis.

of the draft Regulations.

(3) Should services be defined? Many administrations argued for a listing and definition of services to which the new regulations would apply. However, the U.S. opposed such listing and definitions as being too inflexible for the rapid pace of technological innovation and the introduction of new services now taking place. Since the new Regulations will be in place for some time, a rigid listing and definition of services would be futile. The PC/WATTC generally followed the U.S. approach, specifying that types of services are defined in relevant CCITT Recommendations.

(4) What definitions should the Regulations include? The U.S. argued for inclusion of definitions that only could apply for understanding of the Regulations, in keeping with CCITT Resolution No. 16. The PC/WATTC adopted this approach with only minimal definitions included.

(5) What accounting provisions should the Regulations include? The U.S. argued for minimal specifics in the accounting area, leaving details to CCITT Recommendations, but some administrations wanted to maintain certain principles set out in the existing Regulations. The task of developing Article 6 of the Draft Regulations fell to CCITT Study Group III (General tariff principles, including accounting) which held several meetings outside of PC/WATTC to accomplish this work. These matters are discussed in detail in paragraph 3.8 of the Final Report.

8. The draft International Telecommunication Regulations appended to the Final Report of the PC/WATTC is a compromise text which attempts to take into account all concerns expressed during the PC/WATTC process. It was not fully agreed to by all participating Administrations, including the United States, as evidenced by the comments of several administrations on the general philosophy applied by the PC/WATTC during its work. Of particular concern is the seeming contradiction of the language of Article 1 (para. 1.1) and Article 4 (para. 4.1) with the language of Article 1 (para. 1.7). The former seems to limit the application of the Regulations to only those international telecommunication services offered to the public, while the latter seems to enlarge the application of the regulations to "any entity" providing an international telecommunication service.[10]

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10 The United States comments on the draft Regulations, which are among those comments annexed to the Final Report distribution circular from the CCITT, emphasize the concern with the present text of Article 1 (para. 1.7).

9. Although the draft Regulations are the product of intensive discussion within the PC/WATTC, we note that the text is not necessarily cast in stone. In fact, given the nature of the debate, it is likely that the text could change to a significant degree - depending upon further study of the Draft Regulations by all administrations, administrations' input prior to the start of the Conference and the deliberations at the WATTC in 1988. In any event, it is obvious that the results of this conference could have a significant impact on users and providers of international telecommunication services in the years to come. And, while we generally call for comment on the totality of the PC/WATTC Final Report and on the draft International Telecommunication Regulations, we solicit specific views on interpretations of Articles 1 and 4, on the impact of Articles 1 and 4 if the text remains unchanged and suggestions for improvement. We also seek specific views on what the reaction of the U.S. Delegation to WATTC should be, should the WATTC produce new regulations incorporating material not in line with U.S. telecommunications regulatory policy (i.e., should the U.S. decline to sign the product of the conference, take reservations to those objectionable portions, seek further deliberations through a second session of this conference at a later date or develop some other posture). Finally, we invite commenters to submit any additional information or views they believe relevant to the subject matter of this inquiry.

IV. PROCEDURAL MATTERS

10. Authority for this Notice of Inquiry is contained in Section 4(i), 303(r) and 403 of the Communications Act of 1934, as amended. Pursuant to applicable provisions set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 10, 1988, and reply comments on or before March 25, 1988. All submissions by parties to this proceeding or persons acting on behalf of such parties must be in written comments, reply comments or other appropriate pleadings. Reply comments must be served on the person(s) who filed comments to which the reply is directed. Pursuant to Section 1.1204(a)(4) of the Commission's Rules, no ex parte restrictions apply in this proceeding.

11. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be filed with the Secretary, Federal Communications Commission, 1919 "M" Street, N.W., Washington, D.C. 20554. All filings in this proceeding will be available for public inspection during regular business hours in the Docket Reference

Room at the Commission's Washington, D.C. offices. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. The Commission may take into consideration ideas and information not contained in the comments, provided that such information or a writing indicating its nature and/or source is placed in the public file, or is otherwise publically available, and provided that the Commission's reliance on such information is noted in its written disposition of this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE

COMITE CONSULTIVO INTERNACIONAL TELEGRAFICO Y TELEFONICO

COMITE CONSULTATIF INTERNATIONAL TELEGRAPHIQUE ET TELEPHONIQUE

CCITT

NOV 27 1987

CCITT Circular No. 67

Geneva, 9 November 1987

Notre/Our/Nuestra ref.: CP/TT/AL

- To administrations of countries Members of the ITU

☎ 99 5989

- To recognized private operating agencies participating in the activities of the CCITT

- To international organizations in liaison with the CCITT

- To scientific and industrial organizations participating in the activities of the CCITT

Subject : CCITT Resolution No. 15 - Preparation of the World Administrative Telegraph and Telephone Conference, 1988 (WATTC-88)

To the Director-General

Dear Sir,

1. Under section (9) of Resolution No. 15 adopted by the VIIIth CCITT Plenary Assembly (Malaga-Torremolinos, 1984), I have pleasure in enclosing the Final Report on the work of the Preparatory Committee (PC) for WATTC-88 (Annex 1). The Appendix to the Report contains the draft International Telecommunication Regulations as approved by the PC and put into final form by its Chairman in collaboration with the CCITT Secretariat.

2. Your particular attention is drawn to the fact that this version differs from that annexed to CCITT Circular No. 62 of 25 May 1987 in the following two respects :

2.1 Following the practice used in the International Telecommunication Convention (Nairobi, 1982) and in the current Telegraph and Telephone Regulations (Geneva, 1973), a continuous numbering sequence appears in the left-hand margin, but it does not supersede the existing numbering system. When introducing proposed amendments to the draft Regulations to be examined at the WATTC, you are urged to use the continuous numbering system to identify the sections or parts of sections to be amended.

2.2 The word "international" has been deleted from the definition of "international relation" given in section 22. In this connection, it should be noted that proposals submitted by Working Party III/5 and accepted by the PC referred simply to "relation" and that the term "international relation" does not in fact appears in the draft Regulations.

3. Following CCITT Circular No. 62 of 25 May 1987, several administrations offered comments on the general philosophy applied by the PC during its work. Statements by those administrations are given in Annex 2.

Furthermore a number of administrations stated that they had no comments to make at the present juncture, while others proposed amendments to the draft Regulations, which are not reproduced. As pointed out in CCITT Circular No. 62, such proposals will appear in conference documents for consideration at WATTC itself.

4. At the fourth meeting of the PC, the ITU General Secretariat was invited to examine the content and implications of sections 12 (paragraph 1.8) and 110-113 (Article 10) of the draft Regulations (see sections 8.5.7 and 8.13 of Report CP/TT-R 4).

The conclusions of the study carried out in this regard are given in Annex 3.

5. With regard to item 3.8.3 of the final Report on the activities of PC/WATTC-88 (Annex 1), I would inform you that the WARC(MOB)-87 in the meantime has adopted a Resolution along the lines proposed by the PC/WATTC-88 and has invited the Administrative Council to place it on the agenda of the next competent Conference (see the Final Acts of the WARC(MOB)-87, Resolution Com 6/1).

Yours faithfully,

Th. IRMER
Director of the CCITT

ANNEX 1

(to CCITT Circular No.67)

SOURCE: CCITT SECRETARIAT - CHAIRMAN OF PC/WATTC-88

TITLE: FINAL REPORT ON THE ACTIVITIES OF PC/WATTC-88

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1. General

1.1 The Plenipotentiary Conference of the International Telecommunication Union (Nairobi, 1982) decided that a World Administrative Telegraph and Telephone Conference should be convened immediately after the CCITT Plenary Assembly in 1988 to consider proposals for a new international regulatory framework for telecommunication services to meet the new situation arising from the emergence and introduction of new telecommunication services. To that end, it adopted Resolution No. 10 annexed to the International Telecommunication Convention, instructing the CCITT to prepare proposals for submission to the IXth Plenary Assembly in 1988 and also to prepare the agenda for the WATTC and make all the necessary provisions for its organization.

1.2 The VIIIth CCITT Plenary Assembly held in Malaga-Torremolinos in October 1984, after considering the above-mentioned Resolution No. 10, agreed to set up a Preparatory Committee for the 1988 World Administrative Telegraph and Telephone Conference (PC/WATTC-88).

The terms of reference of PC/WATTC-88 are set out in Resolution No. 15 adopted by the VIIIth CCITT Plenary Assembly.

1.3 The chairmanship of PC/WATTC-88 was entrusted to Mr. F. Molina Negro (Spain), with Mr. E. Barbely (United States of America), Mr. L. Katona-Kis (Hungary), Mr. J.C. Kounkou (Central African Republic) and Mr. H. Mahyar (Islamic Republic of Iran) as Vice-Chairmen.

1.4 The above-mentioned Plenary Assembly also decided to instruct CCITT Study Groups I, II and III to give consideration to Questions relating specifically to their respective fields of activity and connected with the preparation of the draft new Telecommunication Regulations. These Questions are reproduced in Appendix 1 to the above-mentioned Resolution No. 15.

2. The need for new Regulations

2.1 At the present time there are two sets of Regulations, which were drawn up by the 1973 World Administrative Telegraph and Telephone Conference, namely:

- the Telegraph Regulations;
- the Telephone Regulations.

2.2 The Telegraph Regulations lay down the general principles to be observed in the international telegraph service, whereas the Telephone Regulations lay down those to be observed in the international telephone service. While the international telephone service is easy to demarcate, the same cannot be said of the international telegraph service, which is described in the Telegraph Regulations as "the generality of the various kinds of international telegraph-type services therein comprised, including the telegram and radiotelegram services, the phototelegraph service, the telex service, the data transmission service, the scheduled radiocommunication service and the leased telegraph circuit service."

2.3 This definition suggests that the current Telegraph Regulations are intended to cover not only the public telegram service but also, to mention only the most well-known of the other services, the telex service and the data transmission service. However, most of the provisions in the Telegraph Regulations relate directly to the telegram service and none of them is concerned specifically with any of the other services mentioned. The logical interference is that there are in fact no regulatory provisions covering the telex service, the data transmission service, or a fortiori, any of the Telematic services.

2.4 Furthermore, it is indisputable that since 1973, the year in which the last World Administrative Telegraph and Telephone Conference was held, telecommunications have developed considerably from the technological, legal and regulatory standpoints as well as with regard to the services provided to users.

This development is characterized essentially by:

- the development of data communication networks;
- the provision of Telematic services (facsimile, Teletex, Videotex);
- diversification of the services offered to users;
- the eventual integral digitization of transmission and switching facilities, resulting in the introduction of the integrated services digital network (ISDN);
- the gradual implementation of wideband networks;
- the advent in some countries of a competitive environment, as opposed to the monopolies existing in many others.

2.5 Given the absence of regulatory provisions providing adequate coverage for all telcommunication services in the public sector and development of technology, services and the economic situation, the 1982 Plenipotentiary Conference considered that a broad international regulatory framework should be established for those telecommunication services.

3. Results of the work of PC/WATTC-88

3.1 PC/WATTC-88 has met four times since it was established by the VIIIth CCITT Plenary Assembly:

- 27 February to 5 March 1985 (see Report CP/TT-R 1);
- 3 to 7 March 1986 (see Report CP/TT-R 2);
- 15 to 19 December 1986 (see Report CP/TT-R 3);
- 27 April to 1 May 1987 (see Report CP/TT-R 4).

3.2 During the present CCITT study period Study Groups I,II and III and their Working Parties have also held a number of meetings at which the specific Questions mentioned in section 1.4 above were studied. The results of their work are set out in Reports COM I-R 1, R 7 and R 15, COM II-R 2, R 10, R 15 and R 16 and COM III-R 1, R 3, R 8, R 10, R 16, R 20 and R 25.

3.3 Both the general considerations set out in section 2 above and the material in Resolution No. 15 led PC/WATTC-88 and Study Groups I, II and III to raise a number of fundamental questions which had to be answered before the draft Regulations, which appear in the Appendix to this final report, could be prepared.

The main problems considered by PC/WATTC-88 and the Study Groups concerned are summarized below.

3.4 To whom should the Regulations apply?

3.4.1 Should the Regulations apply only to administrations and to suppliers of services enjoying the status of recognized private operating agencies, or should they also concern any entity that offers an international telecommunication service or services, such as suppliers of value-added services or service "retailers"?

3.4.2 PC/WATTC-88 was confronted with two opposing views, one voiced by those who favour the greatest possible liberalization of telecommunications and the development of a competitive environment, and the other by those who, while favouring some degree of liberalization, hold that international telecommunications should nevertheless be subject to a number of universally applicable regulations.

3.4.3 In the light of the opinions expressed in Study Group I, PC/WATTC-88 took the view that the Regulations should be signed by the Member States and that the latter should therefore be responsible for the activities of suppliers of international services operating within their territory. Since international services are no longer being offered as part of a monopoly system in which States, administrations and service suppliers are indistinguishable, it is felt that the role and responsibility of Member States should be more clearly defined.

3.4.4 The text prepared by PC/WATTC-88 for paragraphs 1.1 and 1.7 of Article 1 takes account of the various opinions expressed on this subject.

3.5 Which services should be regulated?

3.5.1 There were two different schools of thought on this question also, one side wishing the Regulations to apply only to services "offered to the public", the other advocating strict regulation of all international telecommunication services.

The main difficulty facing the Committee was that of defining in precise terms the scope of the term "public", to which administrations give different meanings depending on their national legislation.

3.5.2 Some administrations considered that the preparation of new Regulations need not automatically entail any change in the present situation with regard to the definition and regulation of international telecommunication services. In their view, the new provisions should apply only to public services and not to private telecommunication networks or to value-added services or networks. Other administrations, however, maintained that a minimum of measures should be taken to regulate all services without exception.

3.5.3 In view of the difficulty of establishing a boundary between "conventional" services and "value-added" services due to service changes and the different approaches adopted by Member States, combined with the lack of any definition of value-added services, Study Group I and hence the Preparatory Committee itself refer in the future Regulations only to the very general concept of "telecommunication".

3.5.4 Article 1, paragraph 1 and Article 4, paragraph 1 were drafted in such a way that the Regulations apply only to services made available to the public, and Article 1, paragraph 1.2 indicates how that notion is to be understood and spells out the general scope of the Regulations.

3.6 Should services be defined?

3.6.1 In Resolution No. 15, the VIIIth Plenary Assembly took the view that the new Regulations should comprise a general section common to all services and individual sections for each service.

3.6.2 It was found that it would be both difficult and futile to compile a comprehensive list of services and that the Regulations should therefore comprise only a general section. However, in response to the wishes expressed by several administrations, Article 4, paragraph 2 specifies that the types of service covered by the Regulations are those defined in the relevant CCITT Recommendations.

3.7 What definitions should the Regulations include?

3.7.1 In accordance with CCITT Resolution No. 16, it was soon agreed that only general definitions required for a proper understanding and correct interpretation of the Regulations should be included.

3.7.2 In this context, it should be noted that new definitions of "service telecommunications" and "privilege telecommunications" were developed, since reference is made to those types of telecommunication in Article 6 on charging and accounting as well as in many CCITT Recommendations and Instructions.

3.8 What accounting provisions should the Regulation include?

3.8.1 In accordance with Appendix 1 to Resolution No. 15, Study Group III was required to revise both Appendix 1 to the Telegraph and Telephone Regulations and Recommendation D.195, and also to revise, where appropriate, the provisions concerning tariffs in the Telegraph and Telephone Regulations and to prepare, where appropriate, draft new regulatory provisions on charging.

3.8.2 After several meetings, Working Party III/5 of Study Group III produced Article 6, which PC/WATTC-88 adopted. The main problems which had to be solved in this process are listed below.

3.8.2.1 Collection charge

Since the establishment of collection charges is a matter for national legislation, the question arose as to whether it was still necessary to maintain the principle of a certain equivalence in the level of charges relating to one and the same service at either end of a relation. In spite of differences of opinion, that principle was retained in the Regulations (paragraph 6.1.1), where it was nonetheless made clear that the level of charges was a national matter.

It was also decided to maintain the principle of applying identical charge whatever route was used.

3.8.2.2 Accounting rate

Over and above the methods for setting accounting charges, it was considered necessary to specify that those charges should be revised in relation to costs. An extra paragraph was added to safeguard the interest of the administrations of destination and transit countries in cases where traffic is sent over a non-authorized route.

The inclusion of a provision prohibiting any reduction or "undisclosed" discount on the amount of the rate was discussed at length but eventually rejected. On the other hand, it was specified that both the establishment and the revision of accounting rates are subject to bilateral agreement, so that different rates may be applied in a given service between the same countries in cases where there are several operating entities in the country or countries.

3.8.2.3 Monetary unit

In accordance with the relevant Article of the Convention (Nairobi, 1982), the two monetary units (the IMF monetary unit (SDR) and the gold franc) were defined. A further provision was added to enable bilateral agreements to be concluded on the use by administrations of a different coefficient for equating the SDR and the gold franc. It should be noted in particular that one Administration suggested to PC/WATTC-88 that the Regulations should no longer mention the gold franc, which had no meaning independent of the SDR. PC/WATTC-88 considered that such a decision was beyond its powers since it would involve amending the Nairobi Convention. It was therefore deemed preferable that the issue should be submitted in the form of a draft Resolution for consideration by WATTC-88, which would decide whether to refer it to the 1989 Plenipotentiary Conference for decision.

3.8.2.4 Establishment of accounts

Several administrations considered that the Regulations should make it clear that the administration of a transit country was not obliged to remunerate the administration of the terminal country until the administration of the country of origin had honoured its obligations. Since such situations were held to be exceptional, that proposal was not accepted. Nevertheless, it was agreed to stipulate that a transit administration should include the accounting data for transit traffic in the relevant outgoing traffic account as soon as possible after receiving such data from the originating administration.

3.8.2.5 Settlement of balance of accounts

Here, the main task was to adjust the provisions of Appendix 1 to the current Regulations and to the prevailing international monetary, situation which has changed considerably since 1973.

It should also be noted that the time-limit for the payment of balances was extended to two calendar months after the day on which the settlement statement is despatched, instead of six weeks after the receipt of the statement as provided in the old Regulations.

3.8.2.6 Service and privilege telecommunications

Accounting provisions for these types of telecommunication were incorporated in the Regulations, since in principle they are assimilated to non-chargeable communications. Such communications may be excluded from international accounting, where no bilateral agreements exist.

3.8.3 Special provisions for maritime telecommunications

3.8.3.1 The Radio Regulations contain special provisions concerning charging and accounting in the maritime mobile and maritime mobile-satellite services (Article 66). The question therefore arose as to whether it would be advisable to transfer those provisions to the future International Telecommunication Regulations in order to bring all the accounting provisions together in a single set of Regulations. Notwithstanding objections by some delegations, PC/WATTC-88 decided in favour of such a transfer and drew up Article 7 which reproduces the contents of Article 66 of the Radio Regulations, amended so as to match the new context.

3.8.3.2 Following this decision, PC/WATTC-88 turned its attention to the procedure for making the transfer, which will have to be endorsed by WARC(MOB)-87 to be held before WATTC-88.

If WARC(MOB)-87 were to decide to delete Article 66 of the Radio Regulations, a number of accounting provisions for the maritime mobile service would not feature in any Regulations in the interval between the entry into force of the two sets of Regulations.

To fill this gap and cater for the transition period, WARC(MOB)-87 is to prepare a draft Resolution for submission to WATTC-88.

4. Suspension of service and official service documents

4.1 In the course of its work, PC/WATTC-88 gave some thought to what should become of Appendix 2 and Resolutions Nos. 1, 2, 4 and 5 of the current Telegraph and Telephone Regulations concerning suspension of service by an administration and the role of the ITU General Secretariat in collecting and disseminating information on the operation of international telecommunication services.

4.2 Those issues were considered by Study Groups I and II which took the view that existing texts could be simplified considerably, with supplementary information being provided in CCITT Recommendations, particularly with regard to the list of service documents to be published and the procedures to be followed for collecting and publishing data. PC/WATTC-88 approved the proposals put forward by Study Groups I and II, which are the subject of Articles 8 and 9.

Appendix 1

(to Annex 1 to CCITT-Circular No. 67)

Draft International Telecommunications Regulations

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PREAMBLE

1. While the sovereign right of each country to regulate its telecommunications is fully recognized, the provisions of the present Regulations are established as a supplement to the International Telecommunication Convention with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication facilities and their most efficient operation while ensuring harmony in world-wide telecommunications.

ARTICLE 1

Purpose of the Regulations

2. 1.1 The Regulations lay down the general principles for the provision and operation of international telecommunication services offered to the public.

3. 1.2 In these Regulations, "the public" is used in the sense of the population, including governmental and legal bodies, within the territory in whole or part of a Member and the Regulations should be understood to include the underlying international telecommunication transport means used to provide end services.

4. 1.3 The Regulations supplement the provisions of the International Telecommunication Convention and are binding in accordance with the relevant provisions of the Convention on all Members of the International Telecommunication Union.

5. 1.4 References to Recommendations and Instructions in these Regulations are not to be taken as giving to those Recommendations and Instructions the same legal status as the Regulations.

6. 1.5 Within the framework of the present Regulations, the provision and operation of international telecommunication services in each relation shall be pursuant to mutual agreement between administrations*.

7. 1.6 In implementing the principles of these Regulations, administrations* should also comply with the relevant CCITT Recommendations including any Instructions forming part of those Recommendations.

8. 1.7 Members shall endeavour to ensure that any entity, established in their territory, using the international telecommunication network to provide an international telecommunication service:

9. a) is so authorized by the Member,

10. b) complies with these Regulations, and

11. c) to the extent considered appropriate by the Member, complies with the relevant CCITT Recommendations.

12. 1.8 The Regulations shall apply, regardless of the means of transmission used, so far as the Radio Regulations do not provide otherwise.

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* or recognized private operating agency(ies).

ARTICLE 2

General definitions

13. (For the purpose of these Regulations, the following terms shall have the meaning defined below. These terms and definitions do not, however, necessarily apply for other purposes)

14. 2.1 Telecommunication

Any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

15. 2.2 International telecommunication service

The offering of a telecommunication capability between telecommunication offices of stations of any nature that are in or belong to different countries.

16. 2.3 Government telecommunication

A telecommunication originating with any:

- Head of State;
- Head of a government and members of a government;
- Commanders-in-Chief of military forces, land, sea or air;
- diplomatic or consular agents;
- the Secretary-General of the United Nations; Heads of the principal organs of the United Nations, and
- the International Court of Justice.

17. 2.4 Service telecommunication

A telecommunication that relates to public international telecommunication and that is exchanged between:

- administrations,
- recognized private operating agencies,
- administrations and recognized private operating agencies,

or between,

- administrations, recognized private operating agencies and ITU regional offices on the one hand,
- and the permanent organs of the International Telecommunication Union and the Chairman of the Administrative Council of the International Telecommunication Union, on the other hand.

18. 2.5 Privilege telecommunication

19. 2.5.1 A telecommunication that may be accorded by administrations during:

- sessions of the ITU Administrative Council,

- conferences and meetings of the ITU

between, on the one hand, representatives of Members of the Administrative Council, Members of delegations, senior officials of the permanent organs of the Union and their authorized colleagues attending conferences and meetings of the ITU and, on the other, their administration or recognized private operating agency or the ITU and relating either to matters under discussion by the Administrative Council, conferences and meetings of the ITU or to public international telecommunications.

20. 2.5.2 A private communication accorded during sessions of the ITU Administrative Council and conferences and meetings of the ITU to representatives of Members of the Administrative Council, members of delegations, senior officials of the permanent organs of the Union attending conferences and meetings, and the staff of the Secretariat of the Union to enable them to communicate with their country of residence.

21. 2.6 International route

Technical facilities and installations located in different countries and used for telecommunication traffic between two international terminal points.

22. 2.7 Relation

Exchange of traffic between two terminal countries, always referring to a specific service if there is between their administrations* :

23. a) a means for the exchange of traffic in that specific service :
- over directs circuits (direct relation), or
- via a point of transit in a third country (indirect relation),

and

24. b) normally, the settlement of accounts.

25. 2.8 Accounting rate

The rate per traffic unit(s) agreed between administrations* in a given relation that is used for the establishment of international accounts.

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* or recognized private operating agency(ies).

26. 2.9 Collection charge

The charge established and collected by one administration* from its customers for the use of an international telecommunication service.

27. 2.10 Instructions

A collection of provisions from a CCITT Recommendation or Recommendations dealing with practical operating procedures for the handling of telecommunication traffic (e.g. acceptance, transmission, accounting).

ARTICLE 3

International network

28. 3.1 Members shall ensure that administrations* cooperate in the establishment, operation and maintenance of the international network to ensure the best possible quality of service.

29. 3.2 Administrations* shall endeavour to provide sufficient telecommunication facilities to meet the requirements of an international telecommunication service.

30. 3.3 Administrations* shall determine by mutual agreement which international routes are to be used. Pending agreement and provided that there is no direct route existing between the terminal administrations* concerned, the origin administration* has the choice to determine the routing of its outgoing telecommunication traffic, taking into account the interests of the relevant transit and destination administrations*.

31. 3.4 Subject to national law, any subscriber by having access to the international network has the right to send traffic originating from a terminal that has been authorized to be connected to the network. The minimum quality of service should correspond to the relevant CCITT Recommendations.

ARTICLE 4

Services offered to users

32. 4.1 Members shall promote the implementation of international telecommunication services offered to the public on a world-wide scale and shall endeavour to extend such services to their national network(s).

33. 4.2 Administrations* shall cooperate to provide by mutual agreement, a wide range of international telecommunication services and should in so doing and where relevant, comply with CCITT Recommendations. Types of international telecommunication services are defined in the relevant CCITT Recommendations.

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* or recognized private operating agency(ies).

34. 4.3 Subject to national law, Members shall endeavour to ensure that users are provided with:

35. a) a capability of having access to the international switched network to send traffic from a terminal which is permitted to be connected to the network, the quality of service contained in the relevant CCITT Recommendations being provided;

36. b) a service making international telecommunication facilities available for their dedicated use;

37. c) a form of telecommunication which is reasonably accessible to the public, including those who may not be subscribers to a specific telecommunication service;

38. d) a capability for interworking between different services as appropriate to facilitate international communications.

ARTICLE 5

Safety of life and priority of telecommunications

39. 5.1 Safety of life telecommunications, such as distress telecommunications, shall be entitled to transmission as of right and shall, where technically practicable, have absolute priority over all other telecommunications, in accordance with the relevant Articles of the Convention and taking due account of CCITT Recommendations.

40. 5.2 Government telecommunications, including telecommunications relative to the application of certain provisions of the United Nations Charter, shall, where technically practicable, enjoy priority over telecommunications other than those referred to in paragraph 5.1, in accordance with the relevant Articles of the Convention and taking due account of CCITT Recommendations.

41. 5.3 The provisions governing the priority enjoyed by all other telecommunications are contained in the relevant CCITT Recommendations.

ARTICLE 6

Charging and accounting

42. 6.1 Collection charges

43. 6.1.1 Each administration* shall, subject to the applicable national law, establish the charges to be collected from its customers. The level of the charges is a national matter; however, in establishing these charges, administrations* should try to avoid too great a dissymmetry between the charges applicable in each direction of the same relation.

* or recognized private operating agency(ies).

44. 6.1.2 The charge levied by an administration* on the customer for a particular communication should in principle be the same, in a given relation, regardless of the route chosen by that administration*.

45. 6.1.3 Where, in accordance with national law, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall be collected only in respect of international telecommunication services billed to customers in that country.

46. 6.2 Accounting rates

47. 6.2.1 For each applicable service in a given relation, administrations* shall by agreement establish and revise accounting rates to be applied between them, taking into account the Recommendations of the CCITT and the cost trends of providing the specific telecommunication service. Such rates shall be divided into terminal shares payable to the administrations* of terminal countries, and where appropriate, into transit shares payable to the administrations* of transit countries.

48. 6.2.2 Alternatively, in traffic relations where CCITT cost studies can be used as a basis, the accounting rate may be determined in accordance with the following method:

49. a) administrations* shall establish and revise their terminal and transit shares taking into account the Recommendations of the CCITT;

50. b) the accounting rate shall be the sum of the terminal shares and any transit shares.

51. 6.2.3 When an administration* or several administrations* acquire, either by flat rate remuneration or other arrangements, the right to utilize a part of the circuit and/or installations of another administration*, the former has the right to establish its share as mentioned in 6.2.1 and 6.2.2 above, for this part of the relation.

52. 6.2.4 In cases where authorized routing(s) have been established by agreement between administrations* and traffic is diverted unilaterally from such a route by the administration* of origin to a routing, which does not have the agreement of the administration* of destination, the terminal shares payable to the administration* of destination shall be the same as would have been due to it had the traffic been routed over the primary authorized routing, and the transit costs are borne by the administration* of origin, unless the administration* of destination is prepared to agree to a different share.

53. 6.2.5 In cases where the traffic is routed via a transit point without authorization and/or agreement to the transit share, the transit administration* has the right to set the level of the transit share to be included in the international accounts.

54. 6.2.6 Where an administration* has fiscal tax or duty levied on its accounting rate shares or other remunerations, it shall not in turn impose such tax or duty on other administrations*.

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* or recognized private operating agency(ies).

55. 6.3 Monetary unit

56. 6.3.1 In the absence of special arrangements concluded between administrations*, the monetary unit to be used in the composition of accounting rates for international telecommunication services and in the establishment of international accounts shall be either

- the monetary unit of the International Monetary Fund (IMF), currently the Special Drawing Right (SDR), as defined by that organization, or

- the gold franc, equivalent to $\frac{1}{3.061}$ SDR.

57. 6.3.2 In accordance with relevant provisions of the International Telecommunication Convention, this provision shall not affect the possibility open to administrations* of establishing bilateral arrangements for mutually agreeable coefficients between the monetary unit of the IMF and the gold franc.

58. 6.4 Establishment of accounts

59. 6.4.1 Unless otherwise agreed, the administrations* responsible for collecting the charges shall establish a monthly account showing all the amounts due and send it to the administrations* concerned.

60. 6.4.2 The accounts shall be sent as promptly as possible and, except in cases of force majeure, before the end of the third month following that to which they relate.

61. 6.4.3 In principle an account shall be considered as accepted without the need for specific notification of acceptance to the administration* which sent it.

62. 6.4.4 However, any administration* has the right to question the contents of an account for a period of two calendar months after the receipt of the account but only to the extent necessary to bring the difference within mutually agreed limits.

63. 6.4.5 In relations where specific agreements do not exist, a quarterly settlement statement showing the balance from the monthly accounts for the period to which it relates shall be prepared as quickly as possible by the creditor administration* and be sent in duplicate to the debtor administration* which, after verification, shall return one of the copies endorsed with its acceptance.

64. 6.4.6 In indirect relations where a transit administration* acts as an accounting intermediary between two terminal points, the transit administration* shall include accounting data for transit traffic in the relevant outgoing traffic account to administrations* beyond it in the routing sequence as soon as possible after receiving that data from the originating administration*.

* or recognized private operating agency(ies).

65. 6.5 Settlement of balances of accounts

66. 6.5.1 Choice of the currency of payment

67. 6.5.1.1 The payment of balances of international telecommunication accounts shall be made in the currency selected by the creditor after consultation with the debtor. If there is disagreement, the choice of the creditor shall prevail in all cases subject to the provisions in 6.5.1.2. If the creditor does not specify a currency, the choice shall rest with the debtor.

68. 6.5.1.2 If a creditor selects a currency with a value fixed unilaterally or a currency the equivalent value of which is to be determined by its relationship to a currency with a value also fixed unilaterally, the use of the selected currency must be acceptable to the debtor.

69. 6.5.2 Determination of the amount of payment

70. 6.5.2.1 The amount of the payment in the selected currency shall be equivalent in value to the balance of the account and shall be determined as follows.

71. 6.5.2.2 If the balance of the account is expressed in the monetary unit of the IMF, the amount of the selected currency shall be determined by the relationship in effect on the day before payment, or by the latest published relationship, between the monetary unit of the IMF and the selected currency published by the IMF.

72. 6.5.2.3 However, if the relationship of the monetary unit of the IMF to the selected currency has not been published, the amount of the balance of account shall, as a first stage, be converted into a currency for which a relationship has been published by the IMF using the relationship in effect on the day before payment or the latest published relationship. The so obtained amount shall, as a second stage, be converted into the equivalent value of the selected currency using the closing rate in effect on the day prior to payment, or the most recent rate quoted on the official or generally accepted foreign exchange market of the main financial centre of the debtor country.

73. 6.5.2.4 If the balance of the account is expressed in gold francs, the amount shall, in the absence of special arrangements, be converted into the monetary unit of the IMF in accordance with the provisions of 6.3 above. The amount of payment shall then be determined in compliance with the provisions of 6.5.2.2.

74. 6.5.2.5 If, in accordance with a special arrangement, the balance of the account is expressed neither in the monetary unit of the IMF nor in gold francs, the payment shall also be the subject of this special arrangement and:

75. a) if the selected currency is the same as the currency of the balance of account, the amount of the selected currency shall be the amount of the balance of account;

76. b) if the selected currency for payment is different from the currency in which the balance is expressed, the amount shall be determined by converting the balance of account to its equivalent value in the selected currency in accordance with the provisions of 6.5.2.3.

77. 6.5.3 Payment of balances

78. 6.5.3.1 Payment of the balances of account shall be effected as promptly as possible but in no case later than two calendar months after the day on which the settlement statement is despatched by the creditor administration*. Beyond this period, the creditor administration* has the right, subject to prior notification in the form of a final demand for payment, to charge interest at a rate of 6% per annum, reckoned from the day following the date of expiry of the said period.

79. 6.5.3.2 The payment due on a settlement statement shall not be delayed pending settlement of a query on that account. Adjustments which are later agreed shall be included in a subsequent account.

80. 6.5.3.3 The debtor shall transmit, on the date of payment, the amount of the selected currency as computed above by a bank cheque, transfer or any other means acceptable to the debtor and the creditor. If the creditor expresses no preference, the choice shall fall to the debtor.

81. 6.5.3.4 The payment charges imposed in the debtor country (taxes, clearing charges, commissions, etc.) shall be borne by the debtor. Any such charges imposed in the creditor country, including payment charges imposed by banks in intermediate countries, shall be borne by the creditor.

82. 6.5.4 Other provisions

83. 6.5.4.1 Provided the periods of payment are observed, administrations* may by mutual agreement settle their balances of various kinds by offsetting:

- credits and debits in their relations with other administrations*; and/or;

- debts arising from postal services, if appropriate.

84. 6.5.4.2 If, between the time the remittance (bank transfer, cheques, etc.) is effected and the time the creditor is in receipt of that remittance (account credited, cheque encashed, etc.), a variation occurs in the equivalent value of the selected currency calculated, and if the difference resulting from such variations exceeds 5% of the amount due as calculated following such variations, the total difference shall be shared equally between debtor and creditor.

85. 6.5.4.3 If there should be a radical change in the international monetary system which invalidates or makes inappropriate one or more of the foregoing paragraphs, administrations* are free to adopt, by mutual agreement, different procedures for the settlement of balances of accounts, pending a revision of the above provisions.

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* or recognized private operating agency(ies).

86. 6.6 Service and privilege telecommunications

87. 6.6.1 Service telecommunications

88. 6.6.1.1 Administrations* may provide service telecommunications free of charge.

89. 6.6.1.2 Administrations* may in principle forego inclusion of service telecommunications in international accounting, under the relevant provisions of the International Telecommunication Convention and the International Telecommunication Regulations, having due regard for the need for reciprocal arrangements.

90. 6.6.2 Privilege telecommunications

Administrations* may provide privilege telecommunications free of charge, and accordingly may forego the inclusion of such classes of telecommunication in international accounting, under the relevant provisions of the International Telecommunication Convention and the International Telecommunication Regulations.

ARTICLE 7

Special provisions concerning charging and accounting for maritime telecommunications

91. 7.1. General

The provisions contained in Article 6, taking into account the relevant CCITT Recommendations, shall also apply to maritime telecommunications insofar as the following provisions do not provide otherwise.

92. 7.2. Accounting authority

93. 7.2.1 Charges for maritime telecommunications from ship to shore shall in principle, and subject to national law and practice, be collected from the maritime mobile station licensee :

94. a) by the administration that has issued the licence; or

95. b) by a recognized private operating agency; or

96. c) by any other entity or entities designated for this purpose by the administration referred to in a) above.

97. 7.2.2 The administration or the recognized private operating agency or the designated entity (or entities) is referred to in this Article as the "accounting authority".

98. 7.2.3 References to administration (or recognized private operating agency) contained in Article 6 shall be read as "accounting authority" when applying the provisions of Article 6 to the maritime telecommunictions.

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* or recognized private operating agency(ies).

99. 7.2.4 The name(s) and address(es) of the accounting authority(ies) with their respective identification code shall be notified to the Secretary-General of the ITU for inclusion in the "List of Ship Stations"; the number of such names and addresses shall be limited in accordance with the CCITT Recommendations.

100. 7.3. Accounting

101. 7.3.1 In principle, an account shall be considered as accepted without the need for specific notification of acceptance to the accounting authority that sent it.

102. 7.3.2 However, any accounting authority has the right to question the contents of an account for a period of six calendar months after dispatch of the account.

103. 7.3.3 All maritime telecommunication accounts shall be paid by the accounting authority without delay and in any case within four calendar months after dispatch of the account, except where the settlement of accounts is undertaken in accordance with paragraph 7.3.5.

104. 7.3.4 If international maritime telecommunication accounts remain unpaid after four calendar months, the administration that has licensed the mobile station shall, on request, take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts from the licensee.

105. 7.3.5 If the period between the date of dispatch and receipt exceeds one month, the receiving accounting authority should at once notify the originating administration (or recognized private operating agency) that queries and payments may be delayed. The delay shall, however, not exceed three calendar months in respect of payment, or five calendar months in respect of queries, both periods commencing from the date of receipt of the account.

106. 7.3.6 The debtor accounting authority may refuse the settlement and adjustment of accounts presented more than eighteen calendar months after the date of the traffic to which the accounts relate.

ARTICLE 8

Suspension of services

107. 8.1 If a Member exercises its right, in accordance with the Convention, to suspend international telecommunication service partially or totally, that Member shall immediately give the Secretary-General written notification of the suspension (and of the subsequent return to normal conditions) by the most appropriate means of telecommunication.

108. 8.2 The Secretary-General shall immediately bring such information to the attention of all other Members, using the most appropriate means of telecommunication.

ARTICLE 9

Official service documents

109. Using the most suitable and economic means, the Secretary-General shall publish information of an administrative, operational, tariff or statistical nature concerning international telecommunication services, on the basis of information provided by administrations*, in accordance with the relevant provisions of the Convention, taking due account of CCITT Recommendations, and on the basis of decisions taken by the Administrative Council or by competent administrative conferences.

ARTICLE 10

Final provisions

110. Entry into force of the Regulations

111. 10.1 These Regulations shall enter into force on .....

112. 10.2 In signing these Regulations, the respective delegates declare that if an administration makes reservations with regard to the application of one or more of the provisions thereof, other administrations shall be free to disregard the said provision or provisions in their relations with the administration which has made such reservations.

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113. IN WITNESS WHEREOF the respective delegates have signed these Regulations in a single copy which shall remain deposited in the archives of the International Telecommunication Union, which shall forward a certified copy to each of the signatory countries.

Done at .....

*or recognized private operating agency(ies).

ANNEX 2

(to CCITT Circular No. 67)

Statements by the administrations of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), Chile, Spain, Greece, the United Kingdom, Switzerland and the United States of America and by INTUG on the general philosophy adopted by PC/WATTC-88 as a basis for the draft new International Telecommunication Regulations (see Circular No. 62 of 25 May 1987).

STATEMENT BY THE FIVE NORDIC ADMINISTRATIONS
(DENMARK, FINLAND, ICELAND, NORWAY AND SWEDEN)

The group of the five Nordic Administrations (Denmark, Finland, Iceland, Norway and Sweden) has during all of the meetings of the Preparatory Committee advocated that the new Regulations should only contain essential principles for the provision and operation of international telecommunication services offered by any entity leaving detailed matters and provisions to be covered by Recommendations. In this perspective it is our opinion that in particular Articles 6 and 7 in the proposed text dealing with charging and accounting should be shortened by transferring detailed matters to Recommendations.

In the view of the Nordic Administrations it would seem appropriate - if and when the present ITU Convention becomes split into two parts, viz., a Constitution and a Convention - to integrate the provisions of the "International Telecommunication Regulations" into the text of a possible new Convention. Consequently the text of the new Regulations should be drafted in the light of that perspective.

The Nordic Administrations have proposed to merge Provisions No. 2008 "Private Operating Agency" and No. 2009 "Recognized Private Operating Agency" of the Convention into a new definition "Recognized Operating Agency" having the following wording: "Any individual or company or corporation, other than a governmental establishment or agency, which operates an international telecommunication service and upon which the obligations provided for in Article 44 of the Convention are imposed by the Member in whose territory the head office of the agency is situated, or by the Member which has authorized this operating agency to establish and operate a telecommunication service on its territory". Accordingly a proposal to that effect may be re-submitted at a later stage.

STATEMENT BY THE CHILEAN TELECOMMUNICATION ADMINISTRATION

1. Considering that Members are required to guarantee access for "the public" to the international telecommunication service, the question arises whether the safeguards referred to in Article 1, § 1.2 and Article 4, §§ 4.2 and 4.3 of the new Regulations are applicable to the leased circuit services contemplated in CCITT Recommendations. Looking at this issue from another angle, the conclusion might be reached that the users of leased circuits are not included in "the public" as defined in the new Regulations.

2. "The public" is defined in Article 1. However, since the text refers only to the switched services, it also seems necessary to include a definition of public services and, for the reasons given above, the leased circuits service.

3. There seems to be some discrepancy between Article 1, § 1.4 and Article 4, § 4.2 with regard to the legal status of CCITT Recommendations, which are denied the same status as the Regulations in § 1.4 but accorded such status in § 4.2.

4. Analysis of Articles 4 and 6 shows that the definition of services offered to the public is perfectly consistent with charging and accounting for the value-added services and leased services referred to above.

5. We consider that telecommunication services should be divided into two categories:

a) public services;

b) value-added services, which are important from the tariff standpoint.

STATEMENT BY THE SPANISH ADMINISTRATION

Having regard to the fact that WATTC is to be held immediately after the IXth CCITT Plenary Assembly, to which PC/WATTC-88 is to submit a report on its preparatory work, and taking into account that the IXth Plenary Assembly will have two weeks in which to discuss questions relating specifically to the CCITT and covering the whole of the previous study period, the Spanish Administration considers that the Plenary Assembly should not discuss the matters which are to be taken up by WATTC but should merely transmit to the latter the report of PC/WATTC, together with any comments it might wish to make.

STATEMENT BY THE GREEK TELECOMMUNICATION ADMINISTRATION

1. The Greek Telecommunication Administration wishes to emphasize that the new International Telecommunication Regulations should cover and govern, without any distinction and/or restriction, all international telecommunication services, both traditional and new, including "value-added" services, regardless of the status of the entity providing them. This approach is consistent with the definition of the term "telecommunication", which clearly includes both new and "value-added" services (Article 2).

It is therefore essential for the relevant Articles of the new Regulations to be drawn up in this spirit.

Any administration which, for any reason, wishes or prefers the new Regulations not to apply to new services will be at liberty to settle the matter by bilateral or multilateral agreement, implicit allowance being made for this possibility in Article 1, § 3.

2. The Greek Administration attaches particular importance to the charging and accounting provisions in Article 6 of the draft new Regulations, since they constitute a comprehensive and apposite exposition of the principles and essential rules for charging and accounting in international telecommunication services.

The Greek Administration considers that these provisions, which gave rise to lengthy and arduous discussions in Working Party III/5, should enjoy the highest possible legal status in relation to other ordinary CCITT texts (Recommendations, Instructions, etc.) and should therefore be part of the future Telecommunication Regulations. Accordingly, it is very firmly of the opinion that they should be retained in the body of the draft Regulations.

Consequently, the Greek Administration is unable to accept the proposals put forward by some administrations at the fourth meeting of the Preparatory Committee (Geneva, 27 April - 1 May 1987) and strongly opposes any amendment to Article 6 which would have the effect of:

- simplifying, diminishing, restricting and/or diluting the Article's contents;
- converting all or part of those contents into an appendix to the Regulations, or
- transferring all or part of the text to a Recommendation.

STATEMENT BY THE UNITED KINGDOM

1. The United Kingdom reserves its position on the draft "International Telecommunication Regulations" prepared by the Preparatory Committee for WATTC-88 (PC/WATTC).

2. The United Kingdom's broad concern is that the extension of International Regulations to "enhanced" services such as value-added and data services may have the undesirable, and possibly unintended, effect of seriously constraining the future development of such services. There has been rapid growth of such services since Resolution No. 10 was approved at Nairobi in 1982, fuelled by market demand and significant technological developments. The United Kingdom believes this trend is set to continue in the future, with such services increasingly being provided on a competitive basis by a wide variety of entities, large and small. The United Kingdom is not aware of any evidence that this rapid growth has been, or is likely to be, hindered in any way through the absence of international regulations in the form proposed by PC/WATTC.

3. Looking ahead to the 1990s and beyond, given continuing changes in technology and an increasingly competitive, market-led environment for international specialized telecommunication services, the United Kingdom finds it difficult to see the purposes which might be achieved by introducing international regulations which might govern such services. Moreover, while the detailed provisions of the draft prepared by PC/WATTC are entirely appropriate to public correspondence services provided by administrations and RPOAs, they are not appropriate to the provision of "enhanced" specialized services provided on a competitive basis.

4. The United Kingdom will therefore be seeking at WATTC approaches to the issues raised by Resolution No. 10 which reflect these considerations.

STATEMENT BY THE SWISS PTT

A large number of bodies belonging to either the State or the private sector work hand in hand all over the world to offer international telecommunication facilities to the public.

The Regulations should apply to all such bodies, irrespective of their legal status.

It is essential for each signatory Member to undertake to ensure that the Regulations are applied by any entity established in its territory and authorized to provide international telecommunication services.

In our view, the Regulations should apply in the same way to all participants. This is an essential prerequisite for providing a service of satisfactory quality, at the lowest possible price, on a universal basis.

STATEMENT BY THE UNITED STATES OF AMERICA

The World Administrative Telegrapn and Telepnone Conference (WATTC) accords to all nations a significant opportunity due to tne importance of international telecommunications for national and global economies.

The WATTC effort is occurring at a time of great change and transition in national telecommunication polices and structures. At the same time, Members are confronting the challenges posed by technological changes, such as the evolution of digital networks, which must interconnect both nationally and internationally with traditional networks. The goal of the WATTC, therefore, must be flexibility and the accommodation of diverse national polices while encouraging the continued efficient evolution of the transborder telecommunication infrastructure.

The United States believes that any new regulations emerging from the WATTC must be consistent with the principal purposes of the International Telecommunication Union (ITU). Tne ITU can "promote the development of technical facilities and their most efficient operation with a view to improving the efficiency of telecommunication services, increasing their usefulness and making them, so far as possible, generally available to the public" (ITU Convention Article 4.1.b) only if it "harmonizes the actions of nations" (ITU Convention Article 4.1.e) by "maintaining and extending international cooperation between all Members of the Union" (ITU Convention Article 4.1.a). New telecommunication regulations within the scope of the existing Convention must be sufficiently flexible to account for different national regimes. They must not mandate particular domestic consequences; additionally, they must not foreclose or prejudice domestic choices which Members may make.

Any new telecommunications regulations must be flexible in another way as well. Technological change will result in networks which operate differently than in the past. If new regulations are to be enduring, they must account for how technological change will affect the services generally available to the public.

In some respects the product of the Preparatory Committee for the WATTC demonstrates the flexible approach adopted by many Members to date:

> The draft regulations recognize that listing specific telecommunication services would lead to definitional problems and would slow the application of new technology. Participating Members realized the needs and capabilities of countries vary with respect to the provision of services made available to their public.

The charging and accounting provision of the draft regulations adopts the traditional, cooperative practice of the ITU: it is specifically applicable only to Administrations and Recognized Private Operating Agencies (i.e., those individuals, companies, and corporations that operate telecommunication installations for the provision of international public telecommunications services).

Notwithstanding the efforts by the Members participating in the Preparatory Committee to draft flexible telecommunication regulations, the United States is concerned that the present text of Article 1.7 is overly broad in that it purports to extend the applicability of the draft regulations to certain users of the international network whereas Members have not assumed such a general obligation (Article 44 of the ITU Convention). The U. S. believes that any international telecommunication regulations should apply only to institutions that provide telecommunication services to the public (and meet the other criteria of an RPOA). Those institutions offering only non-telecommunications services that rely on access to the international network (such as financial, data processing, and information services) are not subject to international regulations.

Furthermore, Article 1.7, as drafted, is ambiguous in that the phrase "any entity" appears only in that provision (and nowhere in the Convention) while all other provisions specifically refer to "Members" or "Administrations*" in imposing obligations or describing desirable conduct. Other draft provisions should likewise be modified to be consistent with other sections of the draft regulations and with the Convention.

The Preparatory Committee has made substantial progress in meeting the tasks set out in Resolution No. 10 (Nairobi 1982). The United States urges all nations to continue their careful study of the present draft and to consider possible new approaches not considered by the Preparatory Committee to achieve a set of regulations that are flexible, that will satisfy the needs of all ITU Members, and that will be consistent with the ITU Convention.

STATEMENT BY THE INTERNATIONAL TELECOMMUNICATIONS
USERS GROUP (INTUG)

Abstract

1. This document introduces INTUG, points out that much international trade and commerce is now totally dependent on telecommunications, and comments on the implications of this on national economies. It states the resulting position being taken by users and relates this to the current draft of the new international telecommunications regulations which INTUG believes will not meet Members' requirements.

Introduction

2. INTUG represents national and regional telecommunications user groups internationally. Each of its 16 full member associations has up to several thousand members which include domestic and professional users, small companies and large corporations. They comprise its Council and set its policy. It also has as associate members over 30 large companies which operate globally and are major users of international telecommunications, and a dozen individual members, mostly experts from the academic community. As an international organisation INTUG has been a member of the CCITT since 1979.

The Increasing Importance of Telecommunications to Users

3. INTUG exists because users are aware of the importance of telecommunications to the way in which they conduct their international businesses and their concerns about the future. As business has become increasingly global, telecommunications has become essential both to link the computer systems which have revolutionised they way in which business is done and to enable businesses to reach out to their customers, suppliers, and work units across the world. To this end users need to benefit from the enormous advances in technology and must not be prevented from doing so by rules and usages which have evolved to meet different criteria.

The Effect of Telecommunications on National Economies

4. In global markets, companies in all countries need to be efficient to respond to competition and to meet national aspirations of increased employment and wealth creation. Efficiency is greatly enhanced by the effective use of information technology. This increasingly depends on the use of telecommunications which has now assumed an importance far beyond the market sector it traditionally represents. Governments are showing awareness of this in the number of commissions and task forces they have appointed to investigate these matters and in the fundamental changes in the regulation and structure of telecommunications which are proposed or have taken place.

The Position of Users

5. Good public telephone and telegraph services as promoted by the 1973 regulations are of fundamental importance to both domestic and business users. INTUG supports the concept of good universal service at reasonable rates. But in addition many business users meet their specialised needs by using computer power in association with telecommunications and so in effect develop individual "services" for themselves. These "services" are necessary to enable them to operate their own core non-telecommunications businesses efficiently, and are used with both international private leased circuits and public networks.

6. Alternatively business users may choose to meet their needs by purchasing the required service from a supplier. Such services will inevitably be highly specialised because of the individual nature of business organisations, and thus their market will be limited. Standardisation which evolved to meet the requirements of universal service is not appropriate to such services, although the services themselves will make use of underlying facilities to which standards are appropriate. Any regulatory action which constrains the user's freedom to develop and use these services will harm the user's interests and thus his performance, and by extension his country's economy.

7. Users want order and harmony in the provision of international telecommunications and the ready availability of services which meet their diverse needs. They expect a wider choice and improved quality at realistic prices. Users wish to see regulations which enable their reasonable expectations to be met, and which are flexible to allow the possibility of quickly benefiting from new technology but framed in a way that will not constrain moves towards greater competitivity in supply.

WATTC Preparatory Committee

8. INTUG has taken part in the meetings of the Preparatory Committee and is surprised at the abruptness with which the proceedings terminated. It is concerned at the departure from a search for compromise and consensus at the end of the final meeting when dealing with critical sections defining the scope and purposes of the regulations. INTUG considers it unfortunate that time constraints were allowed to prevent a proper review of the philosophy and spirit of the ITU Convention being applied to the final draft regulations, and believes that as a result the breadth of the wording chosen could seriously restrict the ability of Members to ensure that the needs of users are met.

User Requirements

9. INTUG believes that the regulations should encourage access to a basic telephone service for all users. They should also ensure the provision of dedicated international facilities for those requiring them and the interconnection of such facilities to public services.

10. INTUG believes that the regulations should be flexible enough to accommodate national variations without restricting users choice or excluding users from the benefit of any future developments, but that flexibility should not result in broad definitions which embrace more than is necessary.

11. INTUG believes that regulations should enable a wide choice of services to be provided competitively to users, particularly where value is added to a basic service. Users note that such services have developed best where there has been minimal regulation.

12. INTUG believes that the regulations should apply only to Members and Administrations/RPOAs and to the basic services which they must provide on a universal basis. The regulations should bring order and harmony to the supply of these international telecommunications services by them, and to relationships between them. The regulations should not apply to domestic or business users nor to their private networks nor services carried on them; neither should they apply to value added services.

Conclusion

13. INTUG believes that these objectives are implicit in the spirit of the ITU Convention which was designed to bring the benefits of technology to the task of improving the economic and social welfare of nations. This will not be achieved unless restrictive elements extending the scope of the draft regulations against the express wish of some Members are removed.

14. There is a serious anxiety among users that the draft regulations have been produced in the knowledge of the developments described in this submission, but without taking proper account of them. INTUG therefore urges WATTC to re-examine these issues before coming to any decision on the form and content of the new regulations.

ANNEX 3

(to CCITT Circular No.67)

LEGAL OPINION ON THE RELATIONSHIP BETWEEN THE NEW DRAFT REGULATIONS AND THE RADIO REGULATIONS

1. As stated in section 8.5.7 of its Report R4 (CCITT Document CP/TT-R.4), the Preparatory Committee, when considering "paragraph 6 of Article 1" (ibid, 8.5.7), which apparently has now become paragraph 1.8 of that Article (see Circular Letter No. 62 (CP/CAMTT/AL) of 25 May 1987), requested the General Secretariat to study further the usefulness or necessity of the maintenance of a provision, within the new draft Regulations, on the relationship between the latter and the Radio Regulations, similar to the respective provision in No. 2 of both the Telegraph and the Telephone Regulations (ibid, paragraphs 8.5.7.1 to 8.5.7.7.2.3). Consequently, the present opinion given by the Legal Adviser deals with that subject.

2. The actual draft of the new Regulations uses the title of "International Telecommunication Regulations", but does not itself define their relationship with the Radio Regulations, although the use of the word "telecommunication" (see definition thereof in No. 2015 of Annex 2 to the 1982 Nairobi Convention) could imply that these new Regulations would apply to all international telecommunication matters including radiocommunications.

3. It is recalled that both the Telegraph and Telephone Regulations (Geneva, 1973) presently in force have an identical provision No. 2 referred to already above which reads: "These Regulations shall apply regardless of the means of transmission used, so far as the Radio Regulations and the Additional Radio Regulations do not provide otherwise".

4. The main reasons for a special provision of this kind are (and continue to be) : one practical and the other legal.

5. The practical reason is that beside the Telephone and Telegraph Regulations there also exist the Radio Regulations (RR), which include provisions dealing in a more specific way with Radio Telephony and Radio Telegraphy, and it is obvious that those provisions have to be taken into account.

6. Without going into a detailed research and examination of all those provisions in the Radio Regulations which could lead to (a) possible conflict(s) with the provisions of the new Regulations, two of them are here referred to as examples:

- Article 51 : "Order of Priority of Communications in the Aeronautical Mobile Service and in the Aeronautical Mobile-Satellite Service"

- Article 61 : "Order of Priority of Communications in the Maritime Mobile Service and in the Maritime Mobile-Satellite Service"

7. The two foregoing examples demonstrate both the present existence of an interrelationship between provisions of a more general character in the new Regulations and those of a more specific (radio!) character in the RR and thus the need to provide for a clear and practical solution, in order to avoid conflicts between provisions with divergent contents. It has to be added here that such conflicts could come about also through future amendments to both the new Regulations and/or the RR adopted respectively by different world administrative conferences.

8. The legal reason is that the Telegraph and Telephone or even the new broader Regulations could not possibly cover every particular aspect and case involving radiocommunications. Therefore, a special provision is required to ensure the application of any specific provisions dealing with radiocommunications and embodied in the RR, in order to make the specific rule (in the RR) applicable to the specific (radio) aspect and case and thus let it prevail over the more general one (in the new Regulations). To achieve this, the legal practice has constantly referred to, and applied, the so-called principle of "lex specialis derogat legi generali" (the specific rule prevails over the general one). The ITU itself has followed this principle in its legislating practice, as can be seen from paragraph 3 above (see also No. 5085 in Article 66 of the RR). Although this principle would, in any legal interpretation, be generally applicable, it is certainly more judicious to provide for it expressly already in the legislative process, in order to avoid, later, interpretation problems.

9. The maintenance of that principle as now stipulated in paragraph 1.8 of Article 1 of the draft Regulations would in no way result in any weakening of the legal status or force of the latter. Already according to Article 83 of the 1982 Nairobi Convention, it is quite clear that any of the Administrative Regulations enumerated therein has the same legal status and force as "complementing" (see text of that Article 83) or "supplementing" (see text in No. 170 of Article 42 of that Convention) the provisions of the Convention.

10. The above course of action is even more advisable in view of two facts. First of all, the Preparatory Committee has chosen for the new Regulations, as already stated in paragraph 2 above, a rather broad title, which by itself could lead to some misunderstanding in its interpretation or, at least, create a wrong impression. Secondly, the Preparatory Committee did not accept the General-Secretariat's corrective suggestion to insert, at least, in the Preamble of the new Regulations an additional phrase that could have drawn the attention to the existence of the other set of Administative Regulations, i.e. the RR, and established the relationship between the latter and the new Regulations. Taking into account these two facts, it appears to be not only appropriate, but even necessary to include, at least, in Article 1 of the new Regulations the paragraph 1.8 to make it, through this provision, clearly understood that the new Regulations will in fact be the "Regulations of International Telecommunications other than Radiocommunications".

Legal opinion

on the use of

the term "administration" (in French: "Administration")

in paragraph 10.2 of Article 10 of the new draft Regulations

as contained in CCITT Circular letter No. 62 (CP/CAMTT/AL)

of 25 May 1987

1. As stated in section 8.13 of its Report R4 (CCITT Document CP/TT/R.4), the Preparatory Committee, inter alia, requested the Legal Service of the General Secretariat to study the above mentioned terminological use, on which it had a long discussion with divergent views expressed (ibid, paragraphs 8.13.1 to 8.13.6). Consequently, the present opinion given by the Legal Adviser deals with that subject.

2. It has to be noted, at the outset, that in the corresponding provision of paragraph 2 (No. 48) of Article 15 of the Telegraph Regulations and of paragraph 2 (No. 29) of Article 11 of the Telephone Regulations - both instruments being currently in force - the use itself of the term in question is divergent in the three working languages of the Union. Whereas the English version contains this term as "Administration" (with an "A" majuscule !), both the French and Spanish versions contain this same term respectively as "administration" and "administración" (with an "a" minuscule !).

3. As far as the English and French versions of paragraph 2 of Article 10 of the new draft Regulations as contained in Circular Letter No. 62 (CP/CAMTT/AL) of 25 May 1987 are concerned, the situation is apparently just reversed. This time, the French version contains the term in question as "Administration" (with an "A: majuscule !; to be noted furthermore, by the way, that this is the only instance, in which this term is so used in the French version, the term "administration(s)" - mainly accompanied by the asterisk indicating "ou exploitation(s) privée(s) reconnue(s)" - otherwise and throughout the rest of the provisions contained in the new draft Regulations being used with an "a" minuscule), whereas the English version contains the term in question as "administration" (with an "a" minuscule !), thus corresponding to the same use of this term as throughout the rest of the provisions contained in the new draft Regulations.

4. Although the use of the term in question as in the English version of the instruments currently in force (see paragraph 2 above) and in the French version of the new draft Regulations (see paragraph 3 above), i.e. "Administration" with an "A" majuscule could be considered as more acceptable and thus preferable, because of this use making a distinction between the Administration, in the context of the provision under consideration, and the "administration(s)" accompanied with the asterisk referred to in paragraph 3 above (see also paragraph 8.13.5 in the Report referred to in paragraph 1 above : in accordance with that paragraph, the Preparatory Committee precisely and with good reasons decided to delete the asterisks following the word "administration"), the use itself of the term "Administration" as such has, from the legal point of view, in this context of "making reservations", to be considered as unsatisfactory, inadequate and even incorrect. This conclusion is based on two grounds.

5. The first ground is taken from the definition of this very term in question in the 1982 Nairobi Convention itself. Annex 2 thereto defines in its No. 2002 "Administration:" as "Any governmental department or service responsible for discharging the obligations undertaken in the International Telecommunication Convention and the Regulations" (emphasis added). From this definition of the term in question - which, by the way, is used throughout the provisions of the 1982 Nairobi Convention as "administration" (with an "a" minuscule) - it is clear that an "administration" is, first of all, only a "governmental department or service", thus only one part of the government of a Member of the Union. Secondly, that part called "administration" is only "responsible for discharging the obligations undertaken in ..." by the respective Member of the Union himself and not by that part of his government. It has, therefore, thirdly, to be concluded that, already in the light of the above definition, "an administration" cannot possibly be responsible for "making reservations with regard to the application of one or more of the provisions thereof", i.e. the new Regulations (see paragraph 10.2 thereof under consideration).

6. This last conclusion leads automatically to the second ground which is based on more general considerations related to the legal principles of international treaty making. Undertaking obligations (for subsequent discharging) and acquiring rights (for subsequent exercising) in an international treaty - and the new Regulations, it is recalled, once adopted will constitute, like the Convention itself, such an international treaty (cf. No. 174 of the 1982 Nairobi Convention) is a matter not belonging to one part of, but of the exclusive and principal prerogative of, any Member himself of the Union. This principle is very well reflected in the provisions of Article 2 of the 1982 Nairobi Convention dealing with "Rights and Obligations of Members" (emphasis added). In any international treaty it may be provided for the possibility (or the exclusion) of making reservations (either with respect to any provision or with respect to only a limited number (usually enumerated) of provisions thereof). If the treaty provides for the possibility of making (limited or unlimited) reservations, then - in the present case of the Union under consideration - any Member himself acquires such a "right", which he himself (and not one of his parts) exercises in his capacity as Member of the Union and thus holder of that right, by in fact making any reservation(s). - The foregoing reasoning finds also its confirmation in the only provision dealing with "reservations" in the 1982 Nairobi Convention. Although included in Article 77 of its chapter XI on the "Rules of Procedure of Conferences and Other Meetings", No. 582 stipulates that

> "... if any decision appears to a delegation to be of such a nature as to prevent its government from ratifying the Convention or from approving the revision of the Regulations, the delegation may make reservations, final or provisional, regarding this decision" (emphasis added).

It is to be noted that the term "administration" is not to be found in this provision which speaks only of "delegation" and "government". Any delegation at an ITU conference represents, and acts on behalf of, the Member of the Union whose government - which in turn generally represents and acts on behalf of that Member - has sent it (cf. the provisions in No. 2005 and 2006 in Annex 2 of 1982 Nairobi Convention; it is realized that in the latter definition (of a "delegate") there is a reference to "an administration of a Member of the Union", but this does not change the foregoing conclusion that any reservation is made on behalf of the Member). Thus, the so specified authority representing

and acting on behalf of a Member alone can make a ("final or provisional") reservation on behalf of that Member, i.e., during a conference, its "delegation" and, at the time of ratification, its "government" by, according to ITU practice, confirming such a "final" reservation or making a "provisional" reservation a "final" one. - In the present context, it is finally worthwhile to refer to the existing ITU practice in the matter of reservations (as reflected e.g. in the Final Protocol to the 1982 Nairobi Convention), according to which reservations are made "for" or "in the name of" the Member (by reference to its official name), as far as the labelling is concerned, and, in their texts, refer either also to the name of the Member or the "Government" generally acting on behalf of that Member; during a quick (not thorough and exhaustive) review of the reservations and declarations or "statements" contained in that Final Protocol no reference to an "administration" was found.

7. For all the reasons given above, it is finally concluded that, from the legal point of view, it is not advisable to use in paragraph 10.2 the term "an administration" or "une Administration". Instead, it would be judicious and legally correct, to use the term "Member" in that provision, this term not only being used in other provisions of the new draft Regulations, but also corresponding to the use of this term in the 1982 Nairobi Convention, in particular in the context of "rights" acquired for exercising by the Members of the Union by virtue of the provisions of the Convention, in conformity with which the new draft Regulations will be considered and eventually adopted by the WATTC'88.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 88-71
37317

In the Matter of	)	
	)	CC Docket No. 86-494
Regulatory Policies And	)	
International Telecommunications	)	

REPORT AND ORDER AND
SUPPLEMENTAL NOTICE OF INQUIRY

Adopted: February 25, 1988 Released: March 25, 1988

By the Commission:

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I. INTRODUCTION

A. Notice of Inquiry and Proposed Rulemaking

1. On December 23, 1986, we adopted a Notice[1] in this Docket initiating an inquiry and rulemaking proceeding to determine whether the public interest requires that we consider the telecommunications policies of foreign governments in the formulation of U.S. regulatory policies. In the Notice, we stated that we believed such an assessment was required for several reasons. First, a substantial portion of all economic activity is now global in scope, and involves the collection, analysis, and dissemination, as well as the transport, of information. Second, telecommunications plays a critical role in our nation's development as our economy becomes increasingly dependent on growth and innovation in advanced technology, which in turn depends, to a large degree, on the ability to access and to communicate information quickly and efficiently. Third, relatively recent developments in the U.S. telecommunications marketplace, including the continuing implementation of our pro-competitive policies and the Bell System divestiture, provide foreign firms with many opportunities to compete on equal terms with U.S. firms in telecommunications and related markets. Fourth, in many other countries, U.S. telecommunications service providers and equipment manufacturers are not permitted to operate at all or are not provided with a fair opportunity to compete.

2. In the Notice, we observed that foreign telecommunications policies, regulations, and practices that restrict the entry of, or discriminate against, U.S. firms have been the subject of increasing concern to the U.S. government. Moreover, the Notice stated that the most immediately apparent effect of such foreign restrictions on U.S. telecommunications firms may be in the trade area, with the U.S. position in telecommunications trade deteriorating from a deficit of $419 million in 1983 to some $2 billion dollars at present.[2] The Notice also made it clear, however, that this Commission's concern with the policies and practices of foreign governments is not motivated solely, or even principally, by the effects these practices have on U.S. firms or the U.S. trade relationship with other countries. Rather, we stated that our primary concern is the actual and potential effect of restrictive foreign

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1 In the Matter of Regulatory Policies and International Telecommunications, Notice of Inquiry and Proposed Rulemaking, CC Docket No. 86-494, 2 FCC Rcd 1022 (released January 30, 1987) (hereinafter Notice).

2 U.S. exports exceeded U.S. imports in telecommunications equipment between 1975 and 1983. See, e.g., U.S. Industrial Outlook 1986.

telecommunications policies and practices on our ability to achieve the efficiency, equity, and national security goals set forth in the Communications Act.

3. To provide an analytic framework for the fundamental policy review we wished to undertake, the Notice was divided into two parts -- an inquiry and a proposed rulemaking. The inquiry portion of the Notice focused on the development of an "international model" that would represent an ideal to be sought in international telecommunications and a benchmark against which international and national policies and practices could be evaluated. Specifically, we proposed the development of an international model based on four objectives: (1) open entry; (2) nondiscrimination; (3) technological innovation; and (4) international comity. The Notice also sought comment on what actions we can, and should, consider to advance these four objectives, including the possibility of actions that might serve to limit access to the U.S. market for foreign-owned firms from jurisdictions that are "closed" to U.S. telecommunications service providers and equipment manufacturers. We also stated, however, that we were well aware any proposed regulations that would serve to limit access of foreign-owned firms to the U.S. market could have important trade, commercial, foreign policy, antitrust, labor, and national security implications. As a result, the Notice invited parties to comment on whether we should consider provisions that would limit access to the U.S. market only after an executive branch determination that such action was appropriate. The Notice stated, further, that our intention is to provide a fair opportunity for all firms to compete in international telecommunications, rather than to "close" the U.S. market to foreign firms. Therefore, the Notice encouraged parties to comment on possible regulatory proposals further liberalizing access to the U.S. market that would offer incentives to foreign administrations to open their markets to U.S. telecommunications service providers and equipment manufacturers.

4. The rulemaking portion of the Notice focused on the issue of whether there is sufficient information currently available to this Commission and other U.S. government policymakers to determine fully the extent to which telecommunications entities from countries that engage in restrictive practices that affect U.S. telecommunications entities have benefited from the liberalization of the U.S. telecommunications market. The Notice tentatively concluded that our current rules do not provide us with sufficient information on the nature and extent of the activities of foreign-owned firms in the U.S. market and therefore proposed, and sought comment on, rule changes that would provide us with information concerning the activities of foreign-owned common carriers, enhanced service providers, and telecommunications equipment manufacturers in the U.S. market. The Notice proposed these rule changes: (1) the establishment of an annual procurement report requirement for carriers concerning the nature and extent of their purchases of core equipment from foreign-owned manufacturers during the preceding year, as well as their planned purchases of such equipment for the coming year; (2) the institution of a requirement that foreign-owned

manufacturers provide annual reports of all sales of equipment registered under Part 68 of our rules; (3) the institution of a reporting requirement for foreign-owned carriers providing common carrier services within the United States; and (4) a recommendation by the Commission to the Department of State that the United States adopt a mandatory Recognized Private Operating Agency (RPOA) certification policy for enhanced service providers. The Notice tentatively concluded that the proposed information reporting requirements would permit us to make a more accurate assessment of the degree to which foreign entities participate in the U.S. market and whether we should proceed with a further notice of proposed rulemaking on the issues raised in the inquiry portion of the Notice.

B. Overview of Comments

5. We received 49 comments and 20 replies in response to the Notice. The commenting parties, with certain exceptions, fall broadly within the following groups: the U.S. government,[3] AT&T and other common carriers, the Bell Operating Companies (BOCs) and other local exchange carriers, domestic and foreign enhanced service providers, domestic and foreign equipment manufacturers, domestic and foreign trade associations, large users, and foreign governments.[4]

6. A large number of parties express support for one or more of the objectives set forth in the Notice or concern about the implications of

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3 See Comments of the National Telecommunications and Information Administration (NTIA). The NTIA comments were coordinated within the Department of Commerce with the International Trade Administration (ITA), and within the executive branch with the Office of the U.S. Trade Representative (USTR), the Office of Management and Budget (OMB), Council of Economic Advisers (CEA), and the Departments of State, Treasury, and Labor. The Department of Defense (DOD) also filed comments. On March 10, 1987, Franklin S. Reeder, Chief, Information Policy Branch, Office of Information and Regulatory Affairs, OMB, sent a letter to Mr. Edward J. Minkel, Managing Director of this Commission. On June 12, 1987, after the completion of the comment cycle, Ambassador Diana Lady Dougan, Coordinator and Director, Bureau of International Communications & Information Policy, Department of State (State), sent a letter to Chairman Dennis R. Patrick.

4 See Appendix A for a list of parties filing Comments and Reply Comments.

restrictive foreign telecommunications policies and practices.[5] A number of these parties, however, and others[6] express concern about the potential negative effect that actions limiting access[7] to the U.S. market could have on the competitiveness of the U.S. telecommunications marketplace. In addition, a number of these parties assert that there is a greater likelihood that in response to such actions on our part, foreign governments would retaliate against, rather than open their markets to, U.S. firms.[8]

7. NTIA, filing for the executive branch, makes clear its view that in most cases U.S. trade policy is consistent with regulatory goals such as maximum diversity of product choice at the lowest possible price. NTIA also observes, however, that in certain instances, trade policy might require limits on imports in order to enforce U.S. rights under international agreements, or to take actions against unfair trade practices of other governments that adversely affect U.S. commerce. Therefore, NTIA recommends that we establish procedures that deal with trade issues when they arise, provided that we routinely consult with the executive branch

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5 See, e.g., Comments of NTIA, DOD, AT&T, several BOCs, MCI, US Sprint, Graphnet, IBM, Motorola, Western Union, Aeronautical Radio, Inc. and the Air Transport Association of America (ARINC), General Datacom, Rockwell, PanAmSat, Turner Broadcasting, Communications Workers of America (CWA), Caribbean Automated Long Lines Service (CALLS), Ericsson, the American Council of Independent Laboratories (ACIL), and the Institute of Electrical and Electronics Engineers (IEEE).

6 See, e.g., Comments of the Government of Canada (Canada), the Commission of the European Communities (EC Commission), Siemens, Messerschmitt, Dialcom, Digital Equipment Corp. (DEC), Reuters, Cable and Wireless (C&W), Standard Telephone and Cable (STC), Vodavi, Association of Data Processing Service Organizations (ADAPSO), Computer and Business Equipment Manufacturers Association (CBEMA), Telenet, U.S. Council for International Business, Information Industry Association (IIA), North American Telecommunications Association (NATA), and United States Telephone Association (USTA).

7 Several foreign parties suggest that there are, or may be, existing barriers in the U.S. market that preclude full access by foreign firms. See, e.g., Comments of British Telecom (BT), the EC Commission, and the Zentralverband Elektrotechnik-und Elektronikindustrie (ZVEI) (a West German manufacturing association).

8 See, e.g., Comments of BT, Contel, IBM, NYNEX, STC, the Communications Industry Association of Japan (CIAJ), and the ZVEI.

with respect to trade policy and, where allowed by law, follow the guidance of the executive branch. NTIA states that such an approach would minimize the possibility that important policy questions would be overlooked when they arise in our regulatory proceedings and would improve the coordination between this Commission and the executive branch agencies responsible for developing and implementing U.S. trade policy. NTIA states that the executive branch is cognizant of the positive role that the Commission has played in support of executive branch trade expansion and facilitation efforts, but observes that we do not have authority to base our regulatory actions solely on trade grounds. NTIA adds that it does not construe the Notice as asserting any such unilateral policy development or action-originating prerogatives, nor does NTIA believe any need has been shown for such an approach. DOD also supports the Commission's tentative conclusion that it must consider the telecommunications policies of foreign governments in the formulation of U.S. regulatory policies, but urges caution in order to ensure that regulatory actions regarding international telecommunications are part of a cohesive, coordinated U.S. strategy that includes extensive coordination on the national security and other key responsibilities of the executive branch.

8. A number of parties support the adoption of information-gathering procedures that would provide information on the nature and extent of foreign firms' participation in the U.S. market.[9] NTIA states that it recognizes that we must stay abreast of commercial, technological, and competitive conditions in the sectors subject to our regulation. NTIA observes that the information this Commission has developed in fulfilling our regulatory functions has been and will continue to be useful to the executive branch agencies as trade policymakers develop and implement U.S. trade policy. Therefore, NTIA recommends that the Commission adopt the proposed rules subject to certain amendments, including consulting and sharing such information with the executive branch to the extent consistent with law and ensuring that such rules impose the minimum possible burden on the industry and the public.[10] DOD also supports our proposed rule changes and asserts that the most detailed and accurate information that can reasonably be obtained can only help lead to more reasoned and effective U.S. actions regarding the telecommunications marketplace. We have also received a number of requests from the Congress for information concerning the activities of foreign-owned telecommunications equipment manufacturers

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9 See, e.g., Comments of NTIA, DOD, ACIL, Graphnet, MCI, Motorola, and Ericsson.

10 OMB observes that the information requested may be information that should held confidential.

and service providers in the U.S. market and the barriers that U.S. firms face in obtaining access to foreign markets.[11]

9. A number of parties, however, oppose the proposed reporting requirements[12] and question the legality of imposing requirements on enhanced service providers, customer premises equipment manufacturers, or solely on foreign-owned firms. AT&T opposes the information reporting requirements as not useful in providing any information about foreign equipment markets and as unnecessary for U.S. services markets. The BOCs oppose the adoption of the proposed annual procurement plan reporting requirement for purchases of core equipment. A number of other parties, particularly foreign equipment manufacturers, also oppose the proposed reporting requirements for core equipment and for customer premises equipment registered under Part 68. Finally, our proposal to recommend that the Department of State adopt a mandatory RPOA requirement for the provision of international enhanced services is strongly opposed by both domestic and foreign enhanced service providers,[13] as well as the Department of State itself.

C. Summary of Order

10. The Notice expressed our serious concern that restrictive foreign telecommunications policies and practices could negatively affect our ability to ensure the achievement of the efficiency, equity, and national security goals of the Act. We emphasized that although the Notice raised the possibility of taking actions that might serve to restrict access to the U.S. market, our intention was to provide a fair opportunity for all firms to compete in international telecommunications, rather than to "close" the U.S. market. We tentatively concluded that we had insufficient information before us to determine fully the extent to which telecommunications entities from countries that engage in restrictive

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11 See, e.g., Letters from Senator Ernest Hollings, Chairman, Senate Committee on Commerce, Science and Transportation, to FCC Chairman Dennis R. Patrick (dated September 16, 1987, and January 25, 1988); Letter from Representative Edward Markey, Chairman, Subcommittee on Telecommunications and Finance, to FCC Chairman Dennis R. Patrick (dated November 18, 1987) and Letter from Representative Bill Richardson to FCC Chairman Dennis R. Patrick (dated January 8, 1988). These and other congressional inquiries concerning the activities of foreign firms in the U.S. telecommunications market will be placed in the docket in this proceeding.

12 See, e.g., Comments of AT&T, IBM, Messerschmidt,and Siemens.

13 See, e.g., Comments of ARINC, DEC, Dialcom, IBM, Reuters, and ADAPSO.

practices toward U.S. telecommunications entities have benefited from the liberalization of the U.S. market. As a result, we proposed the adoption of certain rule changes that would provide us with information on the following four telecommunications and telecommunications-related market sectors: (1) core equipment; (2) customer premises equipment; (3) common carrier services; and (4) enhanced services. We also tentatively concluded that a determination by this Commission as to whether we should propose actions that limit or further liberalize foreign access to the U.S. market would require such additional information on the present nature and extent of foreign participation in the U.S. market.

11. We find that we must augment our ability to monitor developments in domestic and international telecommunications and must continue to work with the executive branch and the Congress to promote a more competitive international telecommunications environment that will best serve the statutory goals of providing for efficient and equitable telecommunications services at just and reasonable rates. In this Order, we conclude that we should take the first step discussed in the Notice --that is, we should address the question of information reporting requirements in the following four market sectors: (1) core equipment; (2) customer premises equipment; (3) common carrier services; and (4) enhanced services. First, this Order establishes annual procurement reporting requirements for Tier I local exchange carriers, and their holding companies and affiliates,[14] and all interexchange carriers having more than $100 million in annual revenues.[15] In order to provide this Commission with a comprehensive and balanced profile on the nature and extent of foreign participation in the U.S. core equipment market, the Order concludes these companies must file annual procurement reports that provide information on their purchases of core equipment from both domestic and foreign-owned firms over the preceding calendar year. Second, the Order concludes that the proposed reporting requirements for registrants of terminal equipment under Part 68 are not practicable, but that the Common Carrier Bureau should work closely with the variety of U.S. government agencies that collect information concerning, or monitor trade in, customer premises equipment to develop a more detailed profile on foreign participation in the U.S. customer premises equipment market. Third, the Order concludes that it is appropriate to establish reporting requirements for foreign-owned carriers providing common carrier services within the United States. These carriers will be required to file traffic and revenue reports on a quarterly basis. Fourth, the Order concludes that this Commission should decline to establish reporting requirements for foreign-owned enhanced service providers operating within the United States or to and from the United

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14 See n. 40 infra.

15 See n. 41 infra.

States and foreign points. The Order discusses movement towards the liberalization of national regulations governing the provision of enhanced services and reaffirms the traditional U.S. view that the primary catalyst for the continuing liberalization of enhanced services internationally will be the success of the U.S. experience and, over time, the experience of other liberalized markets.

12. The Order reaffirms our tentative view that this Commission requires the additional information we will gather on core equipment, customer premises equipment, and common carrier services in order to assess the participation of foreign firms in U.S. markets and to make an informed judgment whether the public interest requires some additional form of regulatory action by this Commission. The Order states that it would be premature for this Commission to address at this time, however, whether we can, and should, take actions that could serve to limit access to the U.S. market based on the restrictive telecommunications policies and practices of foreign governments.

13. Indeed, in light of the comments received in response to the inquiry portion of the Notice, we believe it is necessary to refine our thinking, or seek additional information, with regard to several questions before we consider what, if any, actions we can and should propose. In particular, we note the strong interest expressed by the executive branch in the establishment of Commission procedures that provide for routine consultation with the executive branch with respect to trade policy and the need for Commission procedures to address trade issues as they arise. We also note the strong interest expressed by members of the Congress in the activities of foreign-owned telecommunications equipment manufacturers and distributors and service providers in the U.S. market and the barriers that U.S. firms face in obtaining access to foreign markets. We here invite parties to submit additional comments on the most appropriate procedural mechanism or mechanisms for Commission consideration of the regulatory implications of certain restrictive foreign policies, practices, and procedures for the price, variety, quality and technological sophistication of telecommunications and telecommunications-related goods and services provided to U.S. consumers.

14. Finally, the Order addresses the considerable growth in the net outflow of international telecommunications services revenues from the United States to other countries, and expresses concern that this may have negative implications for U.S. consumers. The Order directs the Chief, Common Carrier Bureau to initiate a study of this question and to report to this Commission in a timely fashion with a recommendation concerning what, if any, action the Commission should consider proposing to lower international accounting rates for telecommunications services originating and terminating in the United States. The Order also invites interested parties to comment on the cost characteristics of international accounting

rates, the interrelationship of international accounting rates and national collection rates, and the implications that above-cost international accounting rates may have on U.S. market access concerns.

II. CORE EQUIPMENT

A. The Notice of Inquiry and Proposed Rulemaking

15. The inquiry portion of the Notice expressed concern that the access of U.S. equipment manufacturers to foreign telecommunications equipment markets can be limited by the "Buy National" policies and the nontransparent procurement procedures of foreign Postal Telegraph and Telephone administrations, or "PTTs." The Notice also expressed concern that to the extent that there are certain economies of scope in the manufacture of telecommunications equipment, these policies may raise production costs for U.S. manufacturers and have a substantial negative impact on the ability of U.S. firms to innovate and on the cost, variety, or quality of telecommunications services provided to U.S. consumers. The Notice asked parties to comment on whether the public interest requires any action by this Commission to encourage foreign countries that are closed to U.S. equipment manufacturers to engage in more open and competitive procurement of core equipment[16] and to permit U.S. firms to participate in national and regional standards-setting bodies. The Notice also asked parties to address whether there are any continuing barriers to entry or discriminatory treatment of foreign firms in the U.S. market and, if so, to provide specific suggestions concerning any actions we might consider taking to provide greater opportunities for foreign-owned equipment manufacturers in the U.S. market in response to market-opening measures in their home countries.

16. The rulemaking portion of the Notice observed that this Commission does not currently have detailed information concerning the nature and level of foreign sales of switching and transmission equipment to common carriers in the United States. As a result, the Notice proposed to require carriers to file annual procurement reports detailing the nature and extent of their purchases of telecommunications core equipment from foreign-owned telecommunications entities during the preceding year, as well as their planned purchases of such equipment for the coming year. The Notice encouraged parties to comment, however, on whether we should exempt certain carriers from filing annual procurement reports based either on their status as nondominant carriers or on the size of their operations. The Notice requested that parties address the question of the confidential

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16 By using the term core equipment, we stated that we meant to include both switching and transmission equipment.

treatment of such information and the optimal method for ensuring that the procurement plans would be used only for public interest determinations by the Commission.

B. Positions of the Parties

17. A number of parties[17] filed comments concerning the proposed reporting requirement and the regulatory treatment of core equipment.[18] AT&T, CWA, IEEE, Motorola, and Rockwell express concern about certain restrictive foreign policies and practices. These parties generally argue, however, that the Commission should work in consultation with the executive branch agencies that have responsibility for U.S. trade policy rather than address these issues unilaterally.

18. AT&T observes that exclusive relationships exist in many foreign countries, with PTTs often purchasing all, or substantially all, of their telecommunications equipment from one or two indigenous suppliers. AT&T states that in Canada, for example, Bell Canada purchases virtually all of its equipment from its affiliated manufacturer, Northern Telecom. AT&T states that PTTs often make equipment procurement decisions based on a variety of criteria, such as support of national research and development, full employment, and balance of trade, and asserts that equipment cost is often a minor criterion. AT&T alleges that the West German PTT, the Deutsche Bundespost, pays Siemens $400-500 per line for digital switching capability and that Siemens has offered the same digital switching capability in other countries for as little as $200 per line. AT&T asserts that information that would be useful in formulating U.S. trade policy would include empirical data about relevant foreign telecommunications markets, such as the proportion of non-domestic telecommunications network equipment in service in a particular country, and it supports the Commission's working with other appropriate federal agencies to collect and evaluate such data.

19. Rockwell states that in Canada, the major portion of the telecommunications equipment market is subject to practices, acknowledged and condoned by the Canadian government, that serve to restrict the entry of U.S. suppliers. Rockwell points out that pursuant to written agreement, Northern Telecom is Bell Canada's "preferred supplier" -- that is, Bell

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17 See Comments of: Ameritech, AT&T, Bell Atlantic, BellSouth, BT, Bellcore, Canada, Contel, CWA, DEC, the EC Commission, Ericsson, General Datacom, IBM, IEEE, Messerschmitt, Motorola, NTIA, NYNEX, PacTel, Rockwell, Southwestern, Siemens, STC, US West, U.S. Council for International Business, USTA, Vodavi, and ZVEI.

18 See generally Comments of NTIA, Rockwell, Ericsson, USTA, Graphnet, MCI and Motorola supporting the proposed annual procurement reports.

Canada seeks to purchase from companies other than Northern Telecom only if Northern Telecom cannot or will not supply the product. Rockwell believes that such restrictive practices may have a detrimental impact on the price, quality, and technological sophistication of telecommunications services between the U.S. and Canada. Rockwell observes that if the cost of equipment is kept artificially high by a preferential procurement agreement, it would be reflected in the price paid for telecommunications services. Rockwell argues that specific regulatory actions affecting foreign-owned companies are premature, however, and that any such actions should await the conclusion of the rulemaking.

20. Motorola states that the cost for U.S. firms to gain even token levels of access to some countries can be extraordinary in terms of dollars, manpower, and other resources, and that such access often requires substantial effort by U.S. government representatives. Motorola asserts that even after gaining access to such countries, U.S. companies cannot compete freely for market share and are strictly confined to a small percentage. Moreover, Motorola observes in some cases government procurement regulations require a certain percentage of goods to be produced in-country. Motorola supports the proposed reporting requirements, but argues that such requirements should be confined to purchases from foreign companies.

21. CWA tentatively supports the objectives of this proceeding, but does not want this position to be misinterpreted as acceptance by the union that present trade law is somehow adequate. CWA asserts that present trade law is entirely inadequate and is an open invitation to other nations to invade the U.S. market and avoid buying U.S.-made goods and services without sanction. CWA states that excluding foreign equipment from the rate bases of regulated carriers, however, could create a positive incentive for carriers to buy equipment produced in the United States.

22. The BOCs and several other local exchange carriers, DEC, IBM, Canada, the EC Commission, and several foreign equipment manufacturers oppose consideration of measures that would serve to limit the introduction of core equipment from foreign-owned telecommunications equipment manufacturers into the U.S. network or the establishment of a reporting requirement that would provide information on the nature and extent of foreign participation. Several BOCs specifically oppose the use of our Section 214 certification process to regulate the purchase of core equipment, particularly switches, produced by foreign-owned firms.[19] Ameritech and Bell Atlantic contend that Section 214 is limited to lines,

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19 In their reply comments, Ameritech and BellSouth dispute CWA's assertion that the Commission has the authority to disallow expenditures for foreign equipment.

and does not apply to switches. Ameritech describes the purpose of Section 214 as the prevention of wasteful duplication of facilities, and says the Commission has traditionally refrained from exercising Section 214 jurisdiction over switching equipment. Bell Atlantic and Contel contend that the Commission and the courts have held that Section 214 authority does not extend to network switching equipment. Ameritech, Bell Atlantic, Pacific Telesis, and Southwestern Bell also argue that even if the Commission has Section 214 authority over switches, it may not take foreign trade concerns into account in deciding whether to approve carrier acquisition of switching equipment. Bell Atlantic contends that only two years ago the Common Carrier Bureau had concluded that trade reciprocity was not cognizable by the Commission.[20] Finally, the BOCs argue that such an approach would be counterproductive and could only prevent or seriously delay the procurement by U.S. carriers of reasonably priced equipment necessary and beneficial to U.S. ratepayers. Indeed, NYNEX and Contel are concerned that any such measures might result in retaliation by foreign countries and firms.

23. DEC expresses concern that action limiting the introduction of foreign equipment in the U.S. network might hamper the BOCs' ability to implement Open Network Architecture (ONA) as ONA will require access to the best possible central office equipment and other high technology products, regardless of origin. Moreover, DEC asserts that the Commission should not focus on central office switches, claiming that a switch is not a severable piece of equipment, built by one single entity; rather, it is often an integrated system built by several entities.

24. IBM believes that limitations on access to the U.S. marketplace would affect U.S. firms as well as foreign ones, because many U.S. firms, including IBM, have foreign sales and manufacturing subsidiaries and have entered into joint ventures with foreign manufacturers or service providers. IBM asserts that measures that effectively restrict the import of telecommunications equipment from other countries would also affect U.S. firms with subsidiaries or joint ventures in those countries. Moreover, IBM argues that restrictive trade measures may well provoke a retaliatory response, rather than encourage liberalization.

25. BT observes that there are numerous "conditions" attached to its license to operate in the U.K., including conditions on its manufacturing activities. BT also references an Office of Telecommunications (OFTEL) report, on BT's acquisition of a second range of

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20 Bell Atlantic at 7, citing Common Carrier Bureau Analysis of the Options Available to the Federal Communications Commission to Promote Trade Opportunities for U.S. Telecommunications Firms, Appendix A at 10 (1985).

digital telephone exchanges, that concluded that the BT decision to purchase the second range of digital exchanges from a supplier with non-British participation reflected normal commercial prudence.

26. STC also asserts that the liberalization policies adopted in the U.K. have greatly increased the opportunities for U.S. and other foreign equipment vendors to enter the U.K. market. STC states that it has invested enormous resources to bring innovative, reasonably priced products to the U.S. market and is concerned with overly broad regulatory requirements that create the impression that foreign companies might be precluded from meeting their contractual commitments. STC observes that its marketing efforts, for example, could suffer irreparably if the U.S. imposes a blanket requirement that local exchange carriers obtain Commission authorization to purchase foreign-manufactured equipment. STC believes that the Commission lacks express or implicit authority under the Communications Act to implement wide-ranging reciprocal trade proposals. STC also argues that statutory and treaty obligations of the U.S. preclude the Commission from implementing its trade proposals and that, even if the Commission had such authority, it should, as a matter of sound public policy, refuse to do so.

27. Siemens opposes all the proposals in the Notice that would limit the access of foreign-owned companies to the U.S. market and urges the Commission to terminate this proceeding. Siemens contends that the purpose of Section 214 is to prevent carriers from constructing unnecessary facilities which would add to the cost of their services, and that prohibiting telephone companies from purchasing telecommunications equipment that is less expensive and of higher quality than domestic equipment, simply because the manufacturer is from a country with whose trade policies the Commission disagrees, would be inconsistent with this intent. Siemens states that it has invested more than $250 million to modify its equipment to make it compatible with U.S. standards and that central office switches, for example, must be evaluated by Bellcore against 8,000 pages of LATA Switching System Generic Requirements (LSSGR), with the vendor paying the approximate $12 million cost for Bellcore review. Siemens states that in Germany, the Bundespost purchases telecommunications core equipment not only from Siemens, but also from a subsidiary of ITT and two smaller companies and adds that the Bundespost assumes the cost of necessary technical reviews. Siemens also asserts that the prices of its digital switches in each market in which it does business are cost-justified. It explains that the following factors contribute to market-to-market variations in price: (1) the location of production facilities serving that market and the labor, transportation, and other costs resulting therefrom; (2) the marketing, financing, and other costs applicable to the sales effort in each market; (3) the average number of lines served by the particular switch; (4) the currency relationship applicable at the time; (4) the functionality of the particular machines being compared; and (5) the type and amount of ancillary service provided in conjunction with the sale of the machine.

28. ZVEI also points to the successful activities of U.S. subsidiaries in the German telecommunications market and points out that for a number of years Standard Electric Lorenz (SEL), which until recently was owned primarily by ITT, has occupied the number two position in the German telecommunications market. ZVEI asserts that the Notice does not address the lack of seriousness and endeavour in the efforts of U.S. companies to penetrate foreign markets. ZVEI argues that to adapt German switches to LSSGR requirements, additional development work amounting to 500 million deutschmarks and a two-year Bellcore examination costing $2 million is necessary.

29. The EC Commission states that the telecommunications sector is characterized by a relatively low level of international trade, which it attributes to the different technical standards that have developed in these areas for telecommunications equipment. The EC Commission asserts that further international cooperation and discussion should be encouraged in order to increase mutual understanding of an evolving situation, to reduce technical barriers to trade, and to enhance international trade in telecommunications services. The EC Commission observes that EC statistics show a substantial and persistent EC trade deficit with the U.S. in telecommunications equipment and that this is also the case for each member state and for each category of product, including switching and transmission equipment. The EC Commission states that while the U.S. is extensively represented in the European market, European core equipment manufacturers experience difficulty in penetrating the U.S. market, notably because of Bellcore equipment evaluation procedures.

30. Bellcore responds to the assertions by the European manufacturers about the role of its equipment evaluation process. Bellcore asserts that this process is open, nondiscriminatory, and procompetitive, regardless of whether owner companies or vendors fund the analyses. Bellcore explains that equipment is analyzed against designated criteria and the results are provided to the vendor for response. Bellcore points out that the analyses may be used by any owner company in its procurement process as it deems appropriate, with a potential savings therefore from multiple use. Bellcore also points out that the vendor receives expert information about technical shortcomings of its product and non-conformity of its product with applicable criteria and that absent such Bellcore evaluation analyses, BOCs might not wish to risk procuring equipment from suppliers with which they have had little or no experience. Bellcore observes that its analyses mitigate the risk of using new equipment and suppliers and thereby promote entry by newcomers, foreign and domestic alike. Moreover, Bellcore points out that its analyses are a factual element that the BOCs may use in making their respective procurement decisions and no more. Bellcore states that because references such as the LSSGR are publicly available, foreign suppliers are not disadvantaged as compared with domestic suppliers and that these documents are not arrived at through a closed, domestic-supplier-only process, such as the procedures

used in Germany. Bellcore recognizes that local U.S. requirements have evolved over the course of more than a century to provide for sophisticated and special American needs, but states that in developing its Technical Advisories and Technical References, Bellcore takes into account existing and anticipated international standards. Finally, Bellcore asserts that the estimated cost of performing a design analysis of a central office switch is $2-3 million, and that an implementation analysis of such a switch is $2-3 million, not the $12 million alleged by Siemens.

31. Several BOCs, Contel, and USTA oppose the reporting requirements for core equipment proposed in the Notice. Bell Atlantic asserts that the filing of procurement reports would be exceedingly burdensome and serve little useful purpose. Bell Atlantic requests that if such reports are required, however, they be limited to procurement of equipment during the prior year, because projected purchases for the future year would be both unreliable and premature. US West agrees that it is impossible to predict with precision what projects will be awarded to which supplier. US West also questions whether, in cases where the components are manufactured offshore and assembled onshore, the certificate of origin be based upon the actual location of final assembly, or the country with the highest percentage of internal components. US West argues that if a "substantial portion" of the production process from raw materials to installed product or provision of service is provided in the United States, those products should be exempt from the proposed reports. US West also asserts that the use of a certificate of origin for each piece of telecommunications equipment would involve a large paper trail that would be cost-prohibitive. Southwestern Bell agrees that it would be difficult to determine foreign-suppliers who operate domestically, but whose foreign locations produce subassemblies and components that are shipped to the U.S. for final assembly. Southwestern Bell also asserts that since many items are purchased on an "as needed" basis, a reliable forecast is often not available. Southwestern Bell is concerned that the release of procurement contracts could violate its contractual obligations with its suppliers and seriously jeopardize its procurement efforts. BellSouth also objects to requiring an itemization of planned purchases and asserts that an Annual Procurement Report would involve the disclosure of highly sensitive commercial information to the public. NYNEX states that if such reports are found to be absolutely necessary, the procurement information should be reviewed on the carriers' premises due to its sensitivity.

32. DEC expresses concern that the reporting requirement would sweep so broadly as to cover a wide spectrum of DEC's business activities that should not be regulated by the Commission. IBM states that the data generated by the proposed reporting requirements would be of doubtful benefit in pinpointing the impact on the U.S. telecommunications marketplace of foreign service providers and foreign manufacturers.

33. The EC Commission argues that a requirement that U.S. carriers should notify the Commission annually of all their purchases from

foreign sources would constitute a prima facie breach of Article III of the GATT[21] and would be inconsistent with the OECD Declaration on International Investment and Multinational Enterprises of 21 June 1976. Furthermore, the EC Commission asserts that a prohibition on the procurement by U.S. telephone companies of telecommunications equipment from foreign sources would be a trade restricting measure contrary to the Punta del Este standstill commitment. ZVEI is concerned that even the reporting requirements could have the inhibitive effect of a market barrier. Messerschmidt argues that the imposition of reporting requirements for the purpose of discouraging or preventing trade with foreign suppliers would be in direct conflict with the international obligations of the United States established in the GATT, and to the extent they apply to products, services and companies that have their ownership or origin in the Federal Republic of Germany, would be contrary to the treaty obligations established by the Treaty of Friendship, Commerce and Navigation between the U.S. and the FRG and therefore in violation of U.S. law. BT argues that should the Commission establish reporting requirements, it should comply with "national treatment" obligations and apply any such reporting requirements to all concerned -- U.S. and non-U.S. enterprises alike.

C. Discussion

34. Section 1 of the Communications Act directs us to exercise our regulatory authority over interstate and foreign telecommunications:

> so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges...."[22]

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21 The General Agreement on Tariffs and Trade (GATT) was instituted in in 1948. Its basic aim is to liberalize world trade, thereby contributing to economic growth and development and to the welfare of the world's peoples. The GATT embodies two basic principles. The first principle, which is found in Article I, provides for most-favored-nation treatment among all members -- that is, all contracting parties provide each other treatment as favorable as they give to any country in the application and administration of import and export duties and charges. The second principle, which is national treatment and is found in Article III, provides for equal treatment of domestic and imported goods.

22 See 47 U.S.C. § 151.

Our primary authority over common carriers is contained in Title II of the Act.[23] Specifically, we have the authority to ensure: that carriers offer service pursuant to "schedules" or tariffs on file with this Commission;[24] that tariffed rates, practices, and regulations are "just and reasonable";[25] and that there is no "undue preference or discrimination in charges, practices, classifications, regulations, facilities, or services for, or in connection with, like communications services...."[26] We also have the power to "prescribe what classification, regulation, or practice is or will be just, fair, and reasonable...."[27]

35. Section 214 provides us with the ability to require that carriers obtain from this Commission a certificate that the "present or future public convenience and necessity require or will require the construction, or operation..." of a new line or an extended line.[28] Section 214 also provides that this Commission "shall have the power to issue such certificate as applied for, to refuse to issue it, or to issue it for a

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23 In addition to our powers under Title II, we have broad ancillary authority over communications-related goods and services under Title I of the Act. While Section 1, cited above, sets out the broad goals of the Act, Section 2(a) of the Act provides that our jurisdiction "shall apply to all interstate or foreign communication by wire or radio... and to all persons engaged within the United States in such communication...." 47 U.S.C. § 152(a). Section 3(a) broadly defines "communication by wire" to include all instrumentalities, facilities, and apparatus incidental to transmission. 47 U.S.C. § 153(a). Moreover, Section 4(i) provides that this Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i).

24 47 U.S.C. § 203.

25 47 U.S.C. § 201(b).

26 47 U.S.C. § 202(a).

27 47 U.S.C. § 205(a).

28 The term "line" is defined in Section 214(a) as "any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels." See 47 U.S.C. § 214(a). As we observed in the Notice, a review of the legislative history of Section 214 as well as the language of the statute indicates that if switching equipment is necessary to establish a channel of communication, it is equipment to which Section 214 could apply. See Notice, supra note 1, at n. 137.

portion or portions of a line, or extension thereof, ... and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require."[29] Moreover, although we agree with several commenting parties that the primary purpose of Section 214 is to ensure against excessive additions to plant that would unduly expand the ratebase and cause higher rates, we have explicitly included other factors, such as the promotion of technological innovation, in our regulatory findings.[30] Nevertheless, although Section 214 gives us broad authority over common carriers, it is fully applied domestically only to dominant carriers extending interstate lines.[31] With the exception of packet switching systems, however, we have not, as yet, subjected the installation of switching systems, to the Section 214 process.[32]

36. Instead, as we stated in the Notice, we have attempted to further the goals of the Communications Act by reducing, or eliminating market entry restrictions for, or discriminatory treatment of, providers of both telecommunications goods and services.[33] For core equipment, an

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29 47 U.S.C. § 214(c).

30 See, e.g., North Atlantic Planning Needs, Report and Order, 84 FCC 2d 760 (1981) and Memorandum Opinion, Order and Authorization, 98 FCC 2d 440 (1984).

31 See, e.g., AT&T Co., 96 FCC 2d 18 (1983). Section 214 is also used as a vehicle, however, for reviewing carrier proposals to construct cable television or "CATV" facilities. See 47 CFR § 63.54 et. seq.

32 See AT&T Tariff FCC No. 270 Rates and Regulations for Bell Packet Switching Service, Memorandum Opinion and Order, 91 FCC 2d 1 (1982) (BPSS Decision). Indeed, in this case we viewed the unique switching process associated with BPSS as a vehicle for creating new lines of communication.

33 It is also important to note that the Modification of Final Judgment (MFJ) in the AT&T divestiture case prohibited the divested Bell Operating Companies (BOCs), which provide local exchange service to some 80 percent of U.S. subscribers, from manufacturing equipment and required them to engage in competitive procurement practices. Among other things, the MFJ specifically stated that:

> No BOC shall discriminate between AT&T and its affiliates and their products and services and other persons and their products and services in the: (1) procurement of products and services; (2) establishment and dissemination of technical information and procurement and interconnection standards; (3) interconnection and use of the BOCs telecommunications service; and (4) provision of new services and the planning for and implementation of the

important aspect of our involvement has been our regulatory oversight of an open and transparent standards setting process in the United States through the development of network standards in the context of the interconnection planning functions of the T-1 Committee sponsored by the Exchange Carrier Standards Association (ECSA)[34] and accredited by the American National Standards Institute (ANSI).[35]

37. Therefore, unlike the national and regional standards setting bodies that generally prevail in other countries, including the Conference Europeene des Administrations des Postes et des Telecommunications (CEPT), membership in the T-1 Committee is open to all parties, including foreign-owned firms, with a direct and material interest in the formulation of interconnection standards. Moreover, although we recognize that foreign-owned firms have contributed to the competitiveness of the U.S. core equipment market, we are concerned that the record in this proceeding seems to confirm that many foreign administrations engage in exclusive procurement arrangements and restrictive standards-setting practices. In our view, it is noteworthy that although a number of foreign manufacturers commented extensively on equipment issues in this proceeding, these firms did not seek to provide a reasonable justification for restrictive procurement practices or for the continuing prescription by foreign governments of mandatory telecommunications equipment standards that are arrived at without a full and fair opportunity for participation by all interested U.S. firms. Nor did they offer any real prospect that modifications to these practices would be forthcoming.

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construction or modification of facilities, used to provide exchange access and information access.

United States v. AT&T, 552 F.Supp. 131, 227 (DDC 1982), aff'd sub. nom., United States v. Maryland, 460 U.S. 1001 (1983).

34 The ECSA was created to serve as a forum for the exchange of information and concerns on a variety of technical standards issues. The formation of ECSA resulted from a series of ad hoc meetings held by the exchange carriers prior to the Bell System divestiture under the auspices of the Washington Legislative Council of Telecommunications. See MTS/WATS Market Structure (Phase III), Report & Order, 100 FCC 2d 860 (1985).

35 Indeed, we concluded that the T-1 Committee was an appropriate organization for the development of voluntary technical standards only after a careful review of the T-1 structure, membership, and functions. See MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, Report and Order, 50 Fed. Reg. 15,547 (1985).

38. Therefore, we will continue our efforts to persuade foreign governments to provide for open and transparent standards-setting procedures and the competitive procurement of core equipment. We recognize, however, that many foreign governments, rather than treating open and transparent standards-setting procedures and open and competitive procurement as sound regulatory practice, may treat such actions as a major trade "concession" that should await completion of negotiations in the Uruguay Round. As a result, we continue to be concerned that restrictive foreign standards-setting and procurement procedures have, and will continue to have, a negative impact on the competitiveness of U.S. firms and on the U.S. trade deficit.

39. Furthermore, we continue to be concerned that restrictive PTT procurement policies and practices may result in higher prices for the telecommunications equipment that is used to provide telecommunications services, including international services originating or terminating in the United States. It is possible that the higher prices associated with equipment procured on a restrictive basis could raise the cost of providing basic transmission service both in other countries and in the United States and increase the per unit price of each minute of use to U.S. consumers.

40. Therefore, in order to assist us in promoting open and competitive international telecommunications markets that provide for the efficient and equitable provision of telecommunications services at just and reasonable rates, and to provide information to the Congress and the executive branch concerning the telecommunications procurement issues involving carriers subject to our jurisdiction under the Act, we affirm our tentative conclusion that we should gather information on the U.S. core equipment market and that we have the clear authority to inquire into the procurement practices of carriers subject to this Act for such purposes.[36] As a result, we adopt the annual procurement report proposal set forth in the Notice, with certain modifications discussed below. While a limited amount of this information is available, as Ameritech and others point out, through the U.S. Customs Service and other government agencies, we agree

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36 Section 211 provides that any carrier subject to the Communications Act shall file with the Commission copies of all contracts, agreements and arrangements with other carriers, whether subject to the Act or not, concerning any traffic affected by the provisions of the Act to which it may be a party. 47 U.S.C. § 211. In addition, Section 215 provides that this Commission "shall examine into transactions entered into by any common carrier" that "relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel" that may affect the services rendered by such carrier and "shall report to the Congress" on such transactions. 47 U.S.C. § 215(a). See also Sections 4(i) and (j), 218 and 403.

with the assessment provided by NTIA, DOD and others that this Commission should have detailed official information on the nature and extent of the activities of foreign-owned firms in the U.S. core equipment market. While we cannot agree with the assertions of several parties that the imposition of an information reporting requirement represents an explicit or implicit barrier to trade, particularly since similar information is available to many other governments in their role as operator of the national telecommunications network, we believe that it is important to establish a comprehensive and balanced profile on the nature and extent of foreign participation in the U.S. core equipment market.[37] As a result, we will require that the annual procurement reports provide information on purchases from both U.S. and foreign suppliers.[38]

41. We will apply the annual procurement report filing requirement, to Tier I LECs,[39] their holding companies, and affiliates,[40]

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37 We will, of course, share this information with the Congress, the executive branch, and the public, to the extent permitted by law, particularly provisions governing confidential treatment of this information.

38 The annual procurement report will be required under Section 63.801 of our rules as provided in Appendix B. These reports should include the name and address of the reporting company and a summary statement concerning the procurement of all pieces of network switching and transmission equipment by that company. These reports should also include a listing of purchases by the reporting company, by name of manufacturer or supplier, of aggregate purchases in dollars of switching and transmission equipment. Moreover, to the extent possible, these reports should use the existing equipment categories set forth in Parts 36, 65, and 67 of our rules. See, e.g., In the Matter of MTS and WATS Market Structure, Amendment of Part 67 (new Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Docket Nos. 78-72, 80-286, 86-297, Report and Order, 2 FCC Rcd 2639 (released May 1, 1987).

39 We have defined Tier I companies as those companies having more than $100 million in total company revenues from regulated operations, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A & B Telephone Companies for 1983. See Commission Requirements for Cost Support Material to be Filed with Access Tariffs, Public Notice, Mimeo No. 2133 (released January 25, 1985). At present, there are 46 Tier I LECs. These include the operating companies of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, US West, Centel, Contel, GTE, and United Telephone. Other Tier I LECs are Cincinnati Bell, Lincoln Telephone, Puerto Rico Telephone Company, Rochester Telephone, and Southern New England Telephone.

40 This Commission has the legal authority to require reports from these

and to interexchange carriers that have revenues exceeding $100 million annually from common carrier operations.[41] We will not require reports from the Tier II LECs,[42] or from the smaller OCCs. We also conclude, however, that we should impose a "sunset" provision on the annual procurement report requirement; this requirement will expire after three years absent a specific determination by this Commission that an extension of this requirement is appropriate. We believe that this approach establishes an appropriate balance between our need to ensure that we obtain sufficient information from carriers subject to our jurisdiction under the Act on the nature and extent of foreign participation in the U.S. market and the need to limit the administrative burdens placed on carriers.[43]

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entities as well. See 47 U.S.C. Sections 154(i)-(j), 211, 218, and 403. See North American Telecommunications Association v. FCC, 772 F.2d 1282 (7th Cir. 1985); US West v. FCC, 778 F.2d 23 (D.C. Cir. 1985).

41 In determining which local exchange carriers and interexchange carriers would be subject to this reporting requirement, we balance the public interest in minimizing reporting requirements on smaller carriers and our need to obtain sufficient information to have a comprehensive, balanced profile on the nature and extent of foreign participation in the U.S. core equipment market. In several contexts, we have imposed reduced administrative burdens on carriers with less than $100 million in annual operating revenues. See, e.g., Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies, Report and Order, CC Docket No. 78-196, 51 Fed. Reg. 43498 (1986) (permitting companies with annual operating revenues of less than $100 million to maintain a less burdensome level of accounting detail and system compliance); Elimination of Annual Reports of Miscellaneous Common Carriers (Form P), Report and Order, CC Docket No. 83-1291, 49 Fed. Reg. 10121 (1984) (eliminating reporting requirement for interexchange carriers with annual operating revenues of less than $100 million). We remain sensitive to the administrative burdens imposed on these smaller carriers and therefore do not subject them to this reporting requirement. We believe that this reporting requirement will satisfy our need for information on the U.S. core equipment market, for we believe that our reporting requirement reaches more than 90 percent of the local exchange and interexchange market segments. For interexchange carriers, the following carriers reported revenues exceeding $100 million in 1986: AT&T, MCI, US Sprint, ALC, USTS/ITT, Cable & Wireless, and Western Union.

42 We have defined Tier II companies as companies that have total company revenues $100 million or less from regulated operations and that file their own access tariffs with this Commission. See Public Notice supra n. 39.

43 Moreover, to ensure that we make every effort to limit any administrative burdens that may be placed on the carriers as a result of these

42. Furthermore, while we note that there is a well-defined regulatory scheme for treatment of confidential materials filed by any person or persons with this Commission,[44] we will adopt Bell Atlantic's proposed modification and we will not require that reporting carriers provide procurement information for the next calendar year.[45] We recognize that the reporting carriers may, for legitimate business reasons, not wish to disclose to their competitors and suppliers the type of information on planned purchases that we would find useful for these monitoring purposes. Moreover, while we believe that this modification addresses the

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new reporting requirements and to ensure that we address the specific concerns expressed by OMB, we will delegate to the Chief of the Common Carrier Bureau the authority to develop further the reporting requirements set forth above and collect the necessary information from the carriers in a manner that is, to the extent practicable, consistent with existing intra-corporate information collection procedures.

44 Section 0.459(a) of our rules, 47 C.F.R.§ 0.459(a), provides that a carrier submitting confidential information (submitter) may submit a request that such information not be made routinely available for public inspection. Moreover, Section 0.457(d) of our rules, which is based on exemption four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), exempts from mandatory disclosure trade secrets and material that is (1) commercial or financial in nature; (2) obtained from a person outside the government; and (3) privileged or confidential. Therefore, in analyzing a request by an outside party for such information, we would generally apply a two-part objective test in determining whether material not privileged as a matter of law is confidential. Under this test, material may be treated as confidential if (a) disclosure is likely to impair the government's ability to obtain information in the future; or (b) disclosure is likely to substantially harm the competitive position of the person from whom the information was obtained. National Parks and Conservation Association v. Morton, 498 F.2d 770 (D.C. Cir. 1974) (National Parks I); Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769, 766-77 (D.D.C. 1974). Moreover, Section 0.461(h)(2) of the rules provides that the party providing the information has administrative and judicial remedies should the FOIA request be granted. Specifically, the party may file an application for review of the Bureau's action with the General Counsel's office within 10 days after the day of a written ruling by the Common Carrier Bureau. Moreover, if the General Counsel's decision is adverse to the party submitting the information, the party may seek judicial review.

45 Initial annual procurement reports concerning actual purchases of switching and transmission equipment during the 1987 calendar year should be filed on or before July 1, 1988, and, for subsequent calendar years, should be filed by May 1 of the following year.

confidentiality concerns of these regulated entities, we will work with the reporting carriers, if they so desire, to develop a format for our public reports on carrier procurement during the preceding year that aggregates individual company data in a fashion that preserves confidentiality and, at the same time, provides the executive branch, the Congress, and the public with information that is useful in determining the extent to which firms from countries that are "closed" to U.S. firms participate in the U.S. market.[46]

43. We recognize, however, that the imposition of regulatory restrictions on the participation of foreign firms in the U.S. core equipment market would involve a substantial reorientation of existing regulatory policy at the federal and state levels.[47] We also recognize that any Commission actions that would serve to limit access to the U.S. core equipment market would raise a number of serious trade, investment, commercial, defense, and foreign policy considerations that could affect U.S. obligations under a variety of bilateral and multilateral agreements. Therefore, we invite parties to submit additional comments on the most appropriate procedural mechanism or mechanisms for Commission consideration of the regulatory implications of restrictive foreign standards-setting practices and procurement procedures on the price, variety, quality and technological sophistication of core equipment used to provide telecommunications services to U.S. consumers. In particular, we invite parties to comment on whether we should consider specific actions in this area only in the context of a rulemaking that would focus on the public interest considerations of such action under the statutory mandate set forth in the Communications Act. Finally, we invite parties to file additional comments on the proper role of the executive branch, including whether we

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46 We believe that this can be done by aggregating procurement information into a comprehensive report that lists the procurement of transmission and switching equipment of all reporting carriers from each of the major U.S. trading partners for the preceding year. Smaller countries could be aggregated into a combined regional category to protect the confidentiality of specific limited purchases of one or more reporting carriers.

47 The procurement practices of local exchange carriers, including the procurement practices of major independents such as GTE, which provides local exchange service to an additional 9 or 10 percent of U.S. subscribers, may be subject to regulatory review at the state level. In 1982, for example, the California Public Utilities Commission issued a resolution requiring the General Telephone Company of California to use competitive bidding for the procurement of its central office switches within that state. See California Public Utilities Commission Approving Resolution No. T-10642, dated December 15, 1982.

should consider, propose, or take action in this area only after some specified determination by the President, or his designated representative, based on U.S. trade, investment, commercial, defense and foreign policy considerations.[48]

III. CUSTOMER PREMISES EQUIPMENT

A. The Notice of Inquiry and Proposed Rulemaking

44. The inquiry portion of the Notice expressed concern that foreign restrictions on the testing, certification, attachment, and sale of customer premises equipment may limit the nature and range of telecommunications and related services that U.S. service providers can offer to subscribers both in the U.S. and, with their foreign correspondents, in foreign countries. As a result, the Notice invited parties to comment on whether the Commission can, and should, incorporate reciprocity criteria into our regulatory program for customer premises equipment and consider denial of certification under Part 68 for customer premises equipment produced by manufacturers from countries that are not "open" to U.S. suppliers.

45. The proposed rulemaking portion of the Notice sought comment on whether we should require the filing of annual reports of sales within the United States of all customer premises equipment registered under Part 68 in order to provide this Commission with more detailed information on the nature and extent of foreign participation in the U.S. customer premises equipment market. The Notice also asked parties to comment whether such a requirement should apply only to foreign applicants and manufacturers.

B. Positions of the Parties

46. A majority of the parties filing comments in this proceeding specifically addressed the customer premises equipment issues raised in the Notice.[49] Although several parties involved in the production or testing of

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48 We will, of course, continue to consult with Congress on a routine basis as we gather additional information in this proceeding and consider what actions might be appropriate.

49 See Comments of ACIL, Ameritech, ARINC, AT&T, Bell Atlantic, BellSouth, BT, Bellcore, Canada, CIAJ, Contel, CWA, DEC, the EC Commission, Ericsson, General Datacom, IBM, IEEE, Messerschmidt, Motorola, NATA, NYNEX, PacTel, Rockwell, Southwestern, Siemens, STC, US West, U.S. Council for International Business, USTA, Vodavi, and ZVEI.

customer premises equipment expressed concern about foreign practices in this area,[50] other parties, including several U.S. firms that sell foreign equipment or with operations in foreign countries, assert that the adoption of a reciprocity standard in the Part 68 registration program would harm U.S. consumers and would be counterproductive in convincing foreign countries to liberalize their markets.[51]

47. AT&T expresses concern that many foreign countries engage in restrictive practices to protect indigenous equipment manufacturers and exclude foreign competitors. AT&T also asserts that the failure of foreign PTTs to accept other countries' test data can make it too costly for American or other foreign firms to go through the process of having their equipment approved for sale. AT&T does not believe, however, that this Commission should take independent action to impose sanctions against foreign telecommunications suppliers.

48. General DataComm argues that much of the competition it faces in the U.S. market comes from foreign firms that do not have open interconnection policies comparable to the U.S. General DataComm asserts that in Japan, for example, digital NCTE devices as well as customer premises equipment for use with ISDN-type services are bundled with the monopoly service provided by NTT and that NTT can manipulate this process to block all but token purchases -- thereby effectively limiting significant purchases to its favored Japanese suppliers. General DataComm supports Commission use of the Part 68 registration program to promote trade reciprocity, and argues that the program should be expanded to include products used in connection with analog private line services.

49. Motorola asserts, among other things, that certain foreign governments, when they make tender requests, specify particular design features, and subsequently manufacture equipment through their own national companies, without licensing agreements. Motorola observes that some countries use excessive delays in obtaining licenses and equipment type approvals to limit and block access by foreign firms. Motorola supports the reporting requirements proposed for customer premises equipment registered under Part 68, but asserts that significant segments of the industry were omitted from the proposal. Motorola argues that the rulemaking should be broadened to include all cellular and land mobile equipment approved under Part 2 of the Rules.

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50 See Comments of ACIL, AT&T, ARINC, Avantek, CWA, General Datacom, IEEE, Motorola, and Rockwell.

51 See, e.g., Comments of DEC, NATA, IBM, and USTA.

50. ACIL, which represents more than 350 independent laboratories, states that it has led the fight for the development of a National Bureau of Standards (NBS) National Voluntary Accreditation Program (NVLAP) in an effort to afford U.S.-generated test data more acceptance in overseas markets. ACIL states that in the three most important markets--Japan, Canada, and Europe--only Canada has a clearly defined accreditation program for foreign laboratories. ACIL states that it would applaud any changes to Part 68 that would define and monitor more closely the country of origin of any submission and questions whether the Commission's proposal goes far enough. ACIL asserts that the Commission should do everything in its power to encourage and support the acceptance of U.S.-generated test data and suggests consideration of possible restrictions on applications from countries that do not openly accept U.S. generated test data.

51. Ericsson argues that onerous procurement procedures or standards requirements should be prohibited and that certificates of compliance with standards from bilaterally or multilaterally approved labs should be internationally accepted. Ericsson also states that the Commission has the legal authority to require firms to file reports on their sales in the U.S. and that gathering such data would enable the Commission to analyze the industry and make more informed judgments when exercising its regulatory authority. Ericsson argues, however, that subjecting only "foreign" equipment suppliers to such reporting requirements would have a devastating effect on the ability of foreign firms to market their equipment in the U.S. Ameritech, Siemens and Vodavi argue that the proposed requirement would generate little information beyond that already available to other government agencies such as the Customs Service and the Bureau of Census.

52. Contel contends that the Commission lacks authority to base Part 68 certification on trade reciprocity criteria. NATA and USTA maintain that U.S. consumers and businesses would be hurt if the Commission decided to consider nationality in the Part 68 certification process. NATA argues that many U.S. companies have invested in the distribution, retailing, installation, and servicing of CPE manufactured in the U.S. and abroad, and that the result has been a proliferation of CPE products at low prices and a reciprocity approach would result in a major loss of American investment and jobs, and a radical decrease in CPE competition in the U.S. NATA also expresses concern that existing equipment would become obsolete if spare parts and peripheral equipment are not available from the foreign manufacturers.

53. The EC Commission also opposes the adoption of a reciprocal approach and argues that the application of "reciprocity criteria" to the Part 68 certification program would conflict with the principles of national treatment and non-discrimination laid down in the GATT Agreement on Technical Barriers to Trade. STC asserts that the Commission has no authority to establish a reciprocal approach through Part 68 and contends that any attempt to do so would violate the Standards Agreement, the GATT,

the Declaration on Transborder Data Flows, and possibly various bilateral Friendship, Commerce and Navigation treaties (FCNs). Moreover, STC argues that if the Commission bases Part 68 certification on reciprocal treatment of U.S. manufacturers, it could trigger the retaliatory measures available under the Standards Agreement. BT opposes the proposal to deny Part 68 certification on the basis of nationality and suggests that such an approach would raise questions of compliance with the Trade Agreement Act of 1979, which incorporates the GATT Standards Code into U.S. law.[52] BT disagrees with the Notice's assertion that the Commission is not a "federal agency" for the purposes of the Trade Agreements Act, and argues the Act defines "federal agency" to include "any independent establishment." BT also asserts that the U.K. approvals regime, which includes approvals issued by OFTEL, does not discriminate on the basis of nationality of the manufacturer, supplier or source of equipment.

54. CIAJ states that as a result of the Telecommunications Business Law and the MOSS talks, entry to the customer premises equipment marketplace in Japan is open to foreign competition. CIAJ points out that domestic or foreign customer premises equipment may be connected to the network so long as it meets the Japanese technical standards, which are limited to preventing harm to the network, like Part 68. CIAJ asserts that the procedure for approving the connection of customer premises equipment has also been streamlined and points out that the approval process is administered by the Japan Approvals Institute for Telecommunications Equipment (JAITE), a neutral agency independent of manufacturers or other interested parties. CIAJ states that foreign test data are now accepted in Japan and that ACIL's perception to the contrary is outdated. CIAJ points out that approval is now granted or denied after a paper examination and that this procedure is usually completed within two months.

C. Discussion

55. Over the course of several decades we have addressed, and emphasized, the importance of liberal attachment policies,[53] transparent

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52 19 U.S.C. §§ 2501-2582. Section 2532 of the Act states: "Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products." Also, "each Federal agency shall, with respect to any certification system used by it, to permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or foreign origin." 19 U.S.C. § 2532(4).

53 The "liberalization" of American telecommunications policy can be traced to a U.S. Court of Appeals decision in 1956 that led to the removal of traditional AT&T tariff restrictions prohibiting the interconnection to the

standards setting procedures,[54] and prompt registration procedures[55] for customer premises equipment. We believe that these efforts have played a fundamental role in the development of an open and competitive marketplace for customer premises equipment in the United States. Indeed, in our Second Computer Inquiry, we conducted an extensive examination into the most appropriate regulatory framework for the provision of customer premises equipment and enhanced services by telephone companies and others and specifically concluded that regulation of CPE was no longer warranted under Title II of the Communications Act.[56] As a result, a robustly competitive

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AT&T network of all customer-supplied customer premises equipment. The court decision addressed the tariff restrictions as applied to the Hush-A-Phone device -- a plastic cup attached to the mouthpiece that was designed to provide a measure of conversation privacy in crowded settings. See Hush-A-Phone Corp. v. United States, 238 F. 2d 266 (D.C. Cir. 1956). More than a decade later, we invalidated AT&T's broad tariff prohibition of devices that could be connected electrically -- not just physically -- to the network. See Carterfone, 13 FCC 2d 420 (1968), reconsideration denied, 14 FCC 2d 571 (1969).

54 In 1976, we eliminated restrictions in telephone company tariffs that prohibited customers from connecting to the telephone network any device that was not supplied by the telephone company, and we adopted our Part 68 equipment registration program. Under Part 68, customer premises equipment that is to be connected to the network, or protective circuitry for such customer premises equipment, is registered with this Commission. The Part 68 program essentially assures that devices directly connected to the telephone network do not cause harm to the telephone network. See Interstate and Foreign Message Toll Telephone, First Report and Order, 56 FCC 2d 593, modified on reconsideration, 58 FCC 2d 716 (1976), Second Report and Order, 58 FCC 2d 736 (1976), aff'd sub. nom. North Carolina Utilities Comm'n v. FCC, 522 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977); see also 47 C.F.R. § 68.3(g) for a definition of "harm."

55 Under Part 68 those seeking registration are required to submit an application demonstrating that the equipment satisfies so-called "no harm to the network" technical criteria. Although the registration application requires information concerning the name and address of the applicant and the name and address of the manufacturer, the nationality of the applicant or the manufacturer is not considered in determining the proper disposition of the application. Moreover, this Commission processes approximately 95 percent of Part 68 registration applications within two months. See Form FCC 730.

56 We determined that "the CPE market is subject to an increasing amount of competition ...." and that the market for enhanced services also is competitive. See Computer II Inquiry, Final Decision, 77 FCC 2d 384, 439, para. 141.

CPE market now exists in the United States that, in our view, is well serving this nation's telecommunications consumers.[57]

56. We are also encouraged by the movement towards more open and liberal policies for the development of standards and the attachment and certification of customer premises equipment in a number of other countries. In recent years, for example, several countries, including Japan, the United Kingdom, the Netherlands, and Sweden, have adopted or expressed an intention to move forward with a more limited technical standard for the attachment of customer premises equipment. Similarly, a number of countries, including France, the Netherlands, and the Federal Republic of Germany, have eliminated, or expressed an intention to eliminate, the so-called "primary instrument" requirement -- that is, a requirement that a subscriber obtain a "main station" from the national telecommunications administration.[58]

57. We continue to be concerned, however, that a number of foreign countries, particularly some countries within the European Community, continue to engage in non-transparent standards-setting practices, lengthy approval or certification procedures, and restrictive attachment policies. Indeed, much remains to be accomplished before the markets in a number of other countries could be considered, in our view, "open" to U.S. manufacturers of customer premises equipment.

58. Based on the record in this proceeding, however, we conclude that we should not adopt the proposed reporting requirements for registrants of customer premises equipment under Part 68. The primary reason for the establishment by this Commission of a Part 68 reporting requirement would be to gather more specific information on customer premises equipment manufactured and sold in this country by domestic or foreign-owned firms. We are concerned, however, that the establishment of Part 68 reporting requirements that would provide us with information on annual U.S. sales of customer premises equipment would prove to be problematic and we will decline to establish such a requirement at this time for several reasons.

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57 See, e.g., Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd 143 (1987).

58 We have specifically determined that the public should have diversity in the supply of customer premises equipment, including the option of furnishing the primary instrument. See Implications of the Telephone Industry's Primary Instrument Concept, Report and Order, 68 FCC 2d 1157 (1978).

59. First, in contrast to the annual procurement report requirement discussed above,[59] which will be applied to common carriers with annual revenues exceeding $100 million as purchasers of equipment, the establishment of the proposed reporting requirement under Part 68 of our rules would be applied to the some 2000 registrants or manufacturers of customer premises equipment. Many of these firms are small and the proposed reporting requirement could prove burdensome. Thus, the imposition of a reporting requirement could affect one of the principal benefits of the Part 68 program -- that is, the ease of compliance.

60. Second, under the terms of the Part 68 registration program manufacturers or distributors of customer premises equipment in the U.S., including manufacturers or distributors of private branch exchanges and key systems, could simply evade the registration requirement through the use of protective coupling devices. This arises from the fact that the protective circuitry that is used to satisfy the technical requirements of the Part 68 program is often relatively inexpensive and may be sold as a discrete device. These devices permit communications and data processing equipment to be lawfully attached to the U.S. telecommunications network without registration. While we could eliminate the provision in Part 68 concerning the use of a protective coupling devices, this would, in turn, alter an important permissive element of the Part 68 program and would restrict customer rights of interconnection.

61. Third, country-of-origin determinations would be particularly difficult for CPE in light of the fact that much of this equipment consists of components manufactured in one or more countries and assembled in yet another country, possibly in the United States. We recognize that other agencies are best suited to making these determinations with regard to CPE and do not believe it is necessary for this Commission to duplicate the activities of other U.S. government agencies in this area. Furthermore, in contrast again to the annual procurement plan requirement, which in many cases will involve a limited number of well-known firms that we are confident we will be able to classify as domestic or foreign, we acknowledge that it would be difficult to undertake a similar classification of some 2000 CPE vendors.[60]

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59 See paras. 34-43.

60 At present under Part 68, this Commission uses the "country of origin" test set forth by the United States Customs Service (Customs). Part 68 provides that a statement of the country of origin "Made in _____" is required on registered equipment if the equipment is not manufactured in the United States. Part 68 also states that country of origin shall be determined in accordance with 19 U.S.C. § 1304 and regulations promulgated thereunder." See Section 68.300(b)(4). Customs regulations, 19 C.F.R. § 134.1(b) define "country of origin" for purposes of Section 304 of the Tariff Act of 1930, 19

62. We also recognize that Customs already maintains detailed tariff schedules for all items imported into this country. Moreover, while information that shows types of equipment, quantities, and countries of origin for foreign supplied customer premises equipment is available from Customs records in computerized form,[61] the Part 68 registration process involves a manual examination of some 2500 applications filed each year.[62]

U.S.C. Section 1304, to mean:

> the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country "country of origin" within the meaning of this part [19 CFR Part 134].

Thus, where an imported article is not the product of one country, the same rule of substantial transformation has traditionally determined the country of origin for both duty and marking purposes in most cases. That principle is also employed to determine whether a manufacturer is the "ultimate purchaser" for purposes of Section 304 of the Tariff Act. See generally, Belcrest Linens v. United States, 741 F.2d 1368, 1371 (Fed. Cir. 1984), Anheuser-Busch Assn. v. United States, 207 U.S. 556 (1932) and National Juice Products Assn. v. United States, 628 F.Supp. 978 (CIT 1986).

61 All importers or brokers for goods imported into the United States are required to file Customs Entry Summary Form CF 7501. See Customs Form 7501, Department of the Treasury, United States Customs Service.

62 The Notice observed, for example, that a staff analysis in 1986 indicated that some 85 percent of registration applications submitted to the Commission listed an equipment manufacturing base in a foreign country, with only 15 percent of the registration applicants listing an equipment manufacturing base in the United States. A more recent staff analysis of registrations, however, identified a substantial change in the percentage of Part 68 applications that list a manufacturing or assembly base in the United States. From April through September 1987, 43% of the applications for registration under Part 68 list a U.S. manufacturing or assembly point. This percentage increased to 46% from October to December 1987. While we will continue to review country of origin of the manufacturer listed on the registration application, we believe that the Customs records provide a more detailed and therefore perhaps more useful assessment of the level of foreign-manufactured customer premises equipment entering the United States.

In addition, several U.S. government agencies, such as the U.S. Census Bureau,[63] and the International Trade Administration,[64] periodically collect information from available sources, such as CF 7501, and compile annual statistical reports that address questions, such as the countries of origin,[65] the dollar value of the imports, the item quantity, and customs charges under different tariff schedules.[66] As a result, we conclude that while in the CPE area the public interest balance tilts against the adoption of additional reporting requirements by this Commission, we believe that the Common Carrier Bureau should work closely with Customs Department, the U.S. Census Bureau, the International Trade Admnistration, and other appropriate U.S. government agencies to develop a profile on the U.S. CPE market based on information culled from existing sources.

63. As discussed above, this information will permit us to make an informed judgment whether the public interest requires some regulatory action by this Commission with regard to the U.S. CPE market. This

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63 See, e.g., "U.S. Imports for Consumption," YSUSA Commodity by Country of Origin, U.S. Census Bureau, Form I-757.

64 See, e.g., 1986 U.S. Imports of Telecommunications Equipment from Selected Countries, International Trade Administration, Department of Commerce.

65 We understand that agencies, such as the Commerce Department, apply different standards of origin in certain instances than those used by Customs, and that the U.S. International Trade Commission (ITC) is examining several rules of origin, including those adopted by Customs (such as the substantial transformation test), the change of tariff heading rule, and the value-added test, at the request of the House Ways and Means Committee. Indeed, ITC has issued a preliminary report seeking public comments to develop a future standardized origin code that would determine origin for statistical purposes. See Standardization of Rules of Origin, Report to the Committee on Ways and Means, U.S. House of Representatives on Investigation No. 332-239 under Section 332 of the Tariff Act of 1930, U.S. International Trade Publication No. 1976, May 1987.

66 The ITA report lists, for example, key import telecommunications product categories under Tariff Schedules 684 and 685, annual sales volumes from different countries, together with a separate compilation of the import penetration percentage of major U.S. trading partners. In calculating import penetration, ITA used $30.3 billion for the size of the U.S. telecommunications market. This figure includes U.S. production for all of SIC 3661 (Telephone and Telegraph Equipment) and the two communications categories of SIC 3662 (Radio Communications and Detection Equipment.)

information will also enable us to respond more fully and expeditiously to numerous Congressional inquiries on this matter. We fully recognize, however, that any Commission actions that would serve to limit access to the U.S. CPE market raise a number of serious trade, investment, commercial, defense, and foreign policy considerations that could affect U.S. obligations under a variety of bilateral and multilateral agreements. Therefore, we invite parties to submit additional comments on the most appropriate mechanism or mechanisms for Commission consideration of the regulatory implications of restrictive foreign attachment policies, nontransparent standards-setting practices, and lengthy registration or certification procedures on the price, variety, quality, and technological sophistication of CPE used to provide telecommunications services to U.S. consumers. In particular, we invite parties to comment on whether we should consider specific actions in this area only in the context of a rulemaking that would focus on the public interest considerations of such action under the statutory mandate set forth in the Communications Act. We also invite parties to file additional comments on the proper role of the executive branch, including whether we should consider, propose, or take action in this area only after some specified determination by the President, or his designated representative, based on U.S. trade, investment, commercial, defense and foreign policy considerations. Finally, we invite parties to comment on the most appropriate procedural mechanism or mechanisms for this Commission to promote a more open and competitive CPE environment in specific foreign countries, including, for example, the most effective way for this Commission to promote the adoption by the Commission of the European Communities[67] of a type approval scheme that would promote a more open and competitive CPE market in Europe and of procedures that would permit the acceptance by European authorities of test data for U.S.-manufactured equipment that are generated in U.S. laboratories.[68]

IV. COMMON CARRIER SERVICES

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67 See Commission of European Communities, Towards a Dynamic European Economy: Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (1987).

68 This Commission accepts test data from independent and manufacturer laboratories, both domestic and foreign. In 1987, roughly thirty laboratories, including nine located in foreign countries, conducted compliance testing for applicants seeking registration of customer premises equipment under Part 68. The nine foreign laboratories were located in the following foreign countries: Canada (4); Japan (3); and Taiwan (2).

A. The Notice of Inquiry and Proposed Rulemaking

64. The inquiry portion of the Notice expressed concern with, and sought comment on, the explicit or implicit entry barriers that U.S. carriers face in foreign markets and the effect of such barriers on the ability of U.S. carriers to compete in both the international and domestic marketplace. The Notice also sought comments on measures that this Commission could consider to promote entry for U.S. carriers, including the possibility of limiting access to the U.S. market for foreign-owned carriers from markets "closed" to U.S. firms or of liberalizing access to the U.S. market for carriers from markets that are "open" to U.S. firms. In addition, the Notice sought comments on possible ways to ensure non-discriminatory treatment of U.S. international service providers, including the possibility of addressing "whipsawing" through customer choice of the carrier, a "sender keep all" settlements approach, or a proportional allocation of return traffic.

65. The rulemaking portion of the Notice sought comment on establishment of reporting requirements that would provide this Commission with more detailed information concerning the activities of foreign-owned carriers in the U.S. market. Specifically, the Notice sought comment on two alternative approaches for gathering information on the activities of foreign-owned carriers in the interstate long distance market: (1) the reinstitution of a Section 214 certification requirement for foreign-owned carriers providing long-distance services within the United States, or (2) the establishment of a requirement that foreign-owned carriers file revenue and traffic reports on their long-distance operations within the United States on a quarterly basis.

B. Position of the Parties

66. MCI, Motorola, CALLS, Graphnet, PanAmSat, Turner Broadcasting, US Sprint, and Western Union express support for Commission examination of alternative approaches to the regulation of common carrier services internationally. MCI states that an important area of concern is the denial of access or the imposition of severe operational restrictions by foreign authorities on the international services of U.S. carriers. MCI observes that to the extent such restrictions are imposed, U.S. carriers and U.S. consumers will be adversely affected. MCI asserts that permitting foreign carriers to have unimpeded access to the U.S. market, while their U.S. competitors are foreclosed from effective competition in foreign markets, undermines Commission efforts to protect the U.S. public interest. Therefore, MCI supports requiring foreign-owned carriers to obtain Section 214 authorization prior to providing services within the U.S. and argues that the proposed information-filing requirements will facilitate Commission efforts to obtain, on a timely basis, the data necessary to support effective regulatory decisions on a case-by-case basis. MCI also encourages continued enforcement of uniform accounting requirements.

67. US Sprint states that limitations on the ability of carriers to obtain operating agreements on fair and equitable terms can prevent carriers from achieving full competitive viability internationally and in related domestic operations. US Sprint observes that in some cases foreign administrations have denied market access to U.S. carriers by simply refusing to enter into operating agreements with more than one U.S. carrier and, in other cases, have required U.S. companies to accept blatantly unfair terms as a condition of receiving an operating agreement. US Sprint states that such terms, which can be viewed as alternative forms of whipsawing, include a refusal to allocate an amount of return traffic equal to that delivered, a requirement that U.S. carriers deliver unreasonably high levels of indirect transit traffic bound for third countries, and a requirement that carriers lacking operating agreements provide service solely via a competitor's facilities or via a single "gateway." US Sprint states, however, that the three alternative approaches to the Commission's current international settlements policy are either not feasible or would most likely meet with resistance in the international community. US Sprint urges retention of the current international settlements policy (ISP) and suggests that any mechanisms that might enhance the workings of this policy be considered in light of foreign administrations' views and concerns.

68. Graphnet asserts that the primary impediment to entry by U.S. carriers in foreign markets is the Commission's international settlements policy since it has the effect of removing any incentive for a PTT to enter into operating agreements with potential new entrants. Graphnet references the petition it has filed, in conjunction with FTCC McDonnell Douglas, seeking a modification of the ISP to permit carriers to enter into operating agreements that deviate from existing arrangements so long as such agreements limit return traffic to a proportion of total return traffic equal to the carrier's share of outbound traffic. Graphnet also references the recent adoption by the Director-General of OFTEL of a similar British policy that suggests that the "ideal arrangement between Mercury, BT and an overseas operator is that the overseas operator should agree to give Mercury and BT what is known as 'proportionate return'."[69] Graphnet states, however, that problems exist even with regard to the U.K., noting that although Graphnet commenced service a year earlier under an operating agreement with BT, it has not received return traffic. Graphnet argues that the Commission should act cautiously before imposing a reciprocal treatment sanction against a firm from a particular foreign country. Graphnet believes, however, that the Commission must identify those countries that have restrictive entry policies and the foreign-owned telecommunications entities from those countries that are operating in U.S.

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69 Graphnet Comments at 8, citing Statement of Professor Bryan Carsberg, Director General of Telecommunications, OFTEL, on Code of Practice on International Accounting Arrangements, para. 19 (March 4, 1987).

markets. Graphnet supports the imposition of a Section 214 certification requirement for foreign-owned carriers operating solely within the U.S. domestic market.

69. Western Union focuses on the question of "whipsawing" and addresses the three alternatives to the international settlements policy raised in the Notice. It suggests that a "sender-keep-all," or SKA, arrangement, under which there are no payouts from the U.S. carrier to foreign PTT for outbound traffic and no payouts from the foreign PTT to the U.S. carrier for inbound traffic, is far preferable to the customer choice or proportionate return approaches. Western Union argues that SKA arrangements eliminate the competitive imbalances that result from above-cost accounting rates. Western Union asserts that above-cost accounting rates impose substantial competitive disadvantages on new entrants and comprise a major element of a U.S. carrier's collection rates to its customers. Western Union believes that SKA arrangements would increase the likelihood that foreign PTTs would enter into direct operating agreements with additional U.S. carriers and would encourage price competition between the traditional and newer carriers. Finally, Western Union points out that SKA arrangements would eliminate the need to regulate accounting rates and settlements.

70. CALLS, a reseller of international switched voice service in the Caribbean, and PanAmSat, the only "separate" international satellite system as yet to have concluded an INTELSAT coordination process, state that they have encountered difficulties in offering telecommunications services internationally. CALLS alleges that its subscribers in the British Virgin Islands, who can only reach CALLS switching facilities through a local Cable and Wireless facility, have experienced difficulties as a result of what CALLS characterizes as anticompetitive behavior by C&W. PanAmSat asserts that it has been adversely affected in marketing its international satellite services by the refusal of foreign telecommunications entities to deal with PanAmSat and by what it alleges is the targeted dumping by INTELSAT of satellite transponders and services at prices significantly below cost. Both CALLS and PanAmSat support the adoption of a Section 214 certification approach that would include conditioning grant of these certificates on other countries' treatment of U.S. carriers. CALLS suggests that the Commission has the necessary legal authority to attach reciprocal treatment conditions to Section 214 certificates and that it should apply this approach not only prospectively, but retrospectively. PanAmSat suggests that the Commission deny Section 214 certificates to carriers from countries that refuse to deal with separate satellite systems.

71. Turner Broadcasting, which operates the Cable News Network (CNN) both domestically and internationally, asserts that the absence of a competitive environment internationally inhibits the efficient and timely distribution of CNN and may have the effect of sheltering from competition domestic broadcast services in other countries. Turner states that some

telecommunications monopolies charge what it believes are "extortionate" prices for downlinking CNN, require use of more elaborate receiving equipment than necessary, and prohibit Turner from marketing CNN directly in that country by requiring that they be made Turner's exclusive agent in their country. Turner thus supports the Commission's interest in, and efforts to promote, open entry in foreign markets.

72. Motorola suggests that the Commission broaden its inquiry to include cellular services, land mobile services (including SMR and private carrier paging services), and fixed service in rural areas. Motorola argues that there are instances in which interconnection to the public switched network is arbitrarily and unreasonably limited to certain services. Motorola states that in some countries, for example, certain services, such as trunked mobile radio, are exclusively provided to the general public by the PTT. Motorola asserts that in other instances, PTT charges for such elements as private lines and radio coverage are so high as to constitute a market-limiting practice. Motorola supports the Commission's information collection proposals as a useful way to establish a better understanding of the effect of foreign firms on domestic telecommunications policy.

73. C&W asserts that the imposition of a domestic Section 214 authorization requirement would be inconsistent with the Commission's longstanding policy of reducing entry barriers to the U.S. market. C&W observes that Section 214 authorization is not designed for information gathering, and suggests as an alternative that foreign-owned carriers be required to report on their service offerings. C&W believes that such reports would be a more effective way to gather information, and would avoid the imposition of what could be characterized as a needless trade barrier.

74. AT&T, Canada, Comsat, ITT, Siemens, and Telenet generally oppose the Commission's proposed information gathering alternatives. AT&T states that there already is a competitive market with respect to services provided jointly by U.S. carriers and their foreign correspondents. AT&T argues that the proposed reporting requirements for common carrier services pertain to a market in which there are no major problems today. AT&T asserts that such information is unlikely to be useful and therefore opposes the use of Section 214 as an information gathering mechanism.

75. Siemens contends that the reinstitution of a Section 214 certification requirement would be inconsistent with our competitive carrier policies that eliminated Section 214 and tariff filing requirements for nondominant carriers on the grounds that such requirements were not necessary to ensure that such carriers charged just and reasonable rates, and that they imposed regulatory costs. Siemens argues that since there is no dispute that the rates charged by foreign-owned carriers are just and reasonable, the proposed measures would trigger the anticompetitive effects associated with reporting requirements with no benefits for consumers of telecommunications goods and services.

76. Telenet argues that the Notice's proposal to impose unique certification and reporting requirements on foreign-owned carriers and potentially to impose restrictions upon such firms depending on the policies of their home governments would impose unique and discriminatory burdens on some "foreign-owned" but U.S.-controlled firms that are potentially unconstitutional under the equal protection clause of the Fourteenth Amendment. Telenet suggests that to be considered "foreign-owned" the Commission should require actual management control, if not majority ownership, by a foreign entity.

77. BT and STC summarize the liberalization of telecommunications in the United Kingdom, including the 1984 Telecommunications Act under which telecommunications became a regulated industry in the U.K. with all operators of telecommunications systems required to be licensed by the Secretary of State for Trade and Industry after consultation with the Director General of OFTEL. BT points out that it currently has one authorized competitor in the provision of national and international services and the British government has made clear its intention to review and to consider the introduction of further competition by November 1990. BT asserts that the openness of the U.K. market, while not reflecting the U.S. market in every respect, nevertheless is comparable. BT states that in some respects, such as the development of network competition at the local level, the U.K. is indeed ahead of the U.S. Moreover, BT asserts that the restriction in Section 310 of the Communications Act on the issuance of microwave licenses to foreign operators is a major hurdle to market entry in the U.S. by foreign companies. BT adds that the U.K. has no such restrictions, and that BellSouth last year acquired forty percent of a British radiopaging company, Aircall.

78. CIAJ states that as a result of changes in Japan's legal structure, as well as international negotiations, Japan is at the forefront of reducing barriers for foreign telecommunications manufacturers and service providers. CIAJ summarizes the Telecommunications Business Law, which defines the extent and method of Japanese government regulation of the telecommunications industry, and the Nippon Telegraph and Telephone (NTT) Corporation Law, under which most of the stock of NTT, the national network provider, has been transferred to private ownership. CIAJ describes the categorization in Japan of services into Type I and Type II services and points out that there are a number of entities that have formed new Type I businesses to compete with NTT. Moreover, CIAJ observes that Type II services, which are subdivided into "Special" and "General" businesses, are not subject to any foreign capital restrictions and therefore, wholly-owned foreign companies, regardless of nationality, may become Type II carriers. CIAJ states that like laws in other countries, however, including the U.S., the Radio Law in Japan traditionally restricted the licensing of radio stations to domestic entities because of national security concerns, but that this law has been amended to permit foreigners to operate any kind of private radio facility necessary for mobile communications on land.

C. Discussion

79. In a series of decisions over several decades, we have provided for open entry in the provision of private and public interstate long distance services.[70] Moreover, we have sought to provide for open entry for carriers originating or terminating international voice or record carrier services in the United States.[71] In contrast with domestic telecommunications services, however, international telecommunications services are typically provided through a cooperative venture of telecommunications entities in two or more sovereign states. As a result, U.S. carriers generally enter into contracts or "operating agreements" with individual PTTs to provide service originating from the U.S. and terminating in a specific foreign country or originating in a specific foreign country and terminating in the U.S.

80. While we recognize that the two largest OCCs have made substantial progress by entering into operating agreements with a large number of foreign administrations over a short period of time,[72] we continue to be concerned that smaller U.S. carriers and other U.S. firms, including U.S. separate satellite providers, continue to be subject to explicit or implicit entry barriers and discriminatory treatment in foreign markets. We have addressed this concern, in part, by treating foreign-owned firms as dominant for the provision of international telecommunications service[73]

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70 See, e.g., Specialized Common Carrier Services, First Report and Order, 19 FCC 2d 870 (1971), aff'd on reconsideration, 31 FCC 2d 1106 (1971), aff'd sub. nom. Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975). See also, MTS/WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177 (1980).

71 See Notice supra note 1 at paras. 24-25.

72 On December 1, 1986, MCI had operating agreements to provide international voice services to 47 countries, and US Sprint had operating agreements to provide international message telephone service (IMTS) to 26 countries. As of March 1, 1988, MCI reports that it has operating agreements with 67 countries, US Sprint reports that it has operating agreements with 75 countries and AT&T reports that it has operating agreements with 208 countries.

73 Foreign-owned carriers are dominant for all international voice and record carrier services to all countries. Carriers are considered foreign-owned if 15 percent of their stock is owned, directly or indirectly, by a foreign telecommunications entity or an employee, agent or representative of a foreign telecommunications entity sits on its board of directors. See International Competitive Carrier Policies, Report & Order, 102 FCC 2d 812

and by streamlining, rather than forbearing from, regulation of international services provided by other OCCs. In light of the continuing concerns expressed by a number of parties concerning open entry for, and nondiscriminatory treatment of, U.S. carriers, however, we conclude that foreign-owned carriers[74] should be subject to a reporting requirement for the provision of domestic common carrier services[75] within the United

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(1985) at n. 74; Reconsideration Denied, Memorandum Opinion & Order, FCC 86-339 (released August 7, 1986).

74 For the purposes of this reporting requirement, we will use the definition of foreign ownership established in our International Competitive Carrier proceeding. Id. Foreign telecommunications entities include telecommunications and telecommunications-related equipment manufacturers, equipment suppliers, and service providers.

75 In our Competitive Carrier proceeding, we established a distinction between dominant and nondominant carriers, and a policy of forbearance from traditional facilities authorization and tariff regulation of nondominant carriers. For the provision of domestic, interstate services, traditional facilities certification and tariffing requirements are fully applied only to AT&T. AT&T's competitors -- the so-called OCCs, including foreign-owned OCCs -- are not required to obtain a Section 214 certificate from this Commission prior to the initiation of service nor are they required to file tariffs detailing the charges, terms, and conditions concerning their service offerings, though every nondominant carrier must provide a report of interstate construction on a semi-annual basis. See 47 C.F.R. § 63.07. See also Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), Reconsideration, FCC 83-69, (released March 21, 1983); Second Further Notice of Proposed Rulemaking, FCC 82-187 (released April 21, 1982); Third Further Notice of Proposed Rulemaking, Mimeo No. 33547, (released June 14, 1983), Third Report and Order, Mimeo No. 012 (released October 6, 1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, FCC 84-82 (released March 22, 1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), rev'd, MCI v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

States.[76] Specifically, we conclude that foreign-owned carriers must submit quarterly reports on their traffic volumes and revenues within the United States.[77] We also conclude that foreign-owned carriers that begin the provision of interstate long distance service within the United States must notify this Commission in writing within thirty days of their commencement of such service. We believe that these requirements will permit us to determine the extent to which foreign-owned carriers have benefited from the liberalization of the U.S. market. Moreover, we believe that for the limited regulatory purpose of gathering information, the reporting requirements we adopt here will limit the administrative burdens on carriers and this Commission and, at the same time, will provide us with the information we require to assist us in promoting open and competitive telecommunications markets that allow for the efficient and equitable provision of service at just and reasonable rates, and to enable us to provide information to the Congress and the executive branch concerning common carrier services provided in this country by foreign carriers subject to our jurisdiction. Furthermore, the scope and purpose of these reporting requirements is fully consistent with our legal authority to require information from carriers providing common carrier services within the United States.[78] Therefore, we do not believe that these reporting requirements raise any unique administrative burden[79] or confidentiality concerns.[80]

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76 Foreign-owned carriers are already required to submit quarterly traffic and revenue for the provision of international common carrier services that originate or terminate in the United States. See 47 C.F.R. Sec. 1.773(a)(ii) (1985).

77 Initial reports for the calendar year 1987 and the first quarter of 1988 should be filed on, or before, July 1, 1988. Subsequent quarterly reports should be filed on, or before, the 90th day after the completion of that quarter.

78 See 47 U.S.C. Sections 154(i)-(j), 211, 215, 218, 220 and 403.

79 As noted above, we already require the reporting of this information for carriers that have been certified by this Commission to provide international services to and from the United States. Moreover, as one party that will be affected, C&W, suggests, this approach is less burdensome than the other alternative discussed in the Notice -- that is, reinstitution of a Section 214 certification requirement.

80 Nor do we believe that these reporting requirements implicate either the GATT or the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. The GATT regime applies only to goods and not to services; the imposition of reporting requirements on foreign-owned service providers, therefore, would not be considered a violation of existing

81. As discussed in the Notice, we also have sought to address the possibility that foreign administrations would be able to obtain unduly favorable terms and conditions from U.S. international service providers by setting U.S. carriers against one another in a process known as "whipsawing,"[81] through continued application of our international settlements policy, which addresses the terms and conditions on which all carriers, dominant or non-dominant, deal with their foreign correspondents in connection with the joint provision of service. In examining this question in the context of this proceeding, however, we are increasingly concerned that uniform international accounting rates that are above-cost may adversely affect the achievement of three objectives -- open entry, nondiscrimination, and technological innovation --discussed in the Notice.

GATT rules. In any event, even after imposition of the reporting requirements discussed above, foreign-owned carriers continue to be treated as nondominant for the provision of domestic, interstate, long-distance services, and thus receive more "favorable" treatment than AT&T -- that is, these carriers are not subject to certification and tariffing requirements that continue to apply to AT&T. The reporting requirements established here also do not deny equal protection, despite Telenet's assertions to the contrary. Except in cases in which a protected class is disadvantaged or fundamental rights are implicated, a governmental authority may treat classes differently, provided that the classification is related to a rational purpose. See New Orleans v. Dukes, 427 U.S. 297 (1976); Dandridge v. Williams, 397 U.S. 471 (1970). The purpose of the reporting requirements adopted in this proceeding is to examine the implications of foreign participation in the U.S. market for U.S. consumers and U.S. carriers in foreign markets. Specifically, we find that information on the extent of such foreign participation is necessary to evaluate the regulatory implications for competition and U.S. consumers, to keep Congress and the executive branch informed on matters affecting national communications policy, and to determine whether further regulatory actions are appropriate.

81 The Notice observed that this could involve a PTT seeking an accounting rate modification more favorable to the PTT -- for instance, an increase in the rate paid by a U.S. carrier to the PTT for the delivery of traffic in that foreign country -- in conjunction with explicit, or implicit, threats to terminate its relationship with a U.S. carrier or to reallocate return traffic away from that carrier. See Notice, supra, note 1 at paras. 36-37. See also Implementation and Scope of International Settlements Policy for Parallel International Communications Routes, Report & Order, CC Docket No. 85-204, FCC 86-50 (released February 7, 1986); Order on Reconsideration, 2 FCC Rcd 1118 (1987).

Indeed, although revenues for overseas services originating or terminating in the United States increased by $1.74 billion from 1975 to 1986 ($862 million to $2.6 billion),[82] the net revenue outflow paid by U.S. carriers to their foreign correspondents increased from $78.3 million to $1.2 billion.[83] In addition, the United States had a substantial deficit for overseas voice telephone service in 1986, with several countries, such as the Federal Republic of Germany,[84] Japan, and South Korea, that have been the subject of significant U.S. trade concerns.[85] While we recognize that the significant increase in international telephone traffic volume and revenues has resulted, in large part, from a definite downward trend in international message telephone rates, including international direct dial rates, that originate in the United States,[86] we are

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82 The majority of the growth in revenues came for overseas telephone services, which grew from $589.6 million in 1975 to $2.0 billion in 1986, based on an increase in the volume of message telephone calls from 42.6 million to 500 million. Although there was more moderate growth in overseas record carrier services during this period, revenues increased from $272.2 million in 1975 to $587.9 million in 1986. See Trends in the International Communications Industry 1975-1986, Industry Analysis Division, FCC (December, 1987) [hereinafter IAD Report].

83 Net revenue outflow, as defined in the IAD Report, represents the differences between payments by U.S. carriers to foreign administrations for service that originated in the United States and receipts by U.S. carriers from foreign administrations for service that terminated in the United States, excluding Canada and Mexico. Id. at Table 2, p. 16 n.5.

84 The combined 1975-1986 net revenue outflow, for example, to the Federal Republic of Germany for IMTS service was $628,639,984. Looked at another way, although the U.S. Department of Commerce estimates that the U.S. had a telecommunications equipment trade surplus of $64.3 million in 1986 with the Federal Republic of Germany, the IAD Report shows that U.S. had an IMTS "deficit" with the F.R.G. of $87.6 million.

85 Net flow on IMTS service from the United States to the Federal Republic of Germany increased from $10.1 million in 1975 to $87.6 million in 1986. Net flow on IMTS service from the U.S. to Japan increased from $2.9 million to $62.4 million. Similarly, net flow from the U.S. to South Korea increased from $3.3 million to $76.7 million.

86 These rate reductions result from a variety of factors, such as the introduction of time-of-day pricing schemes in 1982 and reductions in the carrier common line charge. MTS and WATS Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Report & Order, 2 FCC Rcd 2953 (1987); Recommended Decision and Order, 2 FCC Rcd 2324 (1987).

increasingly concerned that we have not seen a similar reduction in international accounting rates.[87] Instead, we have seen the foreign correspondents' shares of IMTS revenues accounting for an increasing proportion of the gross revenues generated from calls originating in the United States.[88]

82. While we recognize that there may be a variety of reasons for the relatively high level of international accounting rates for service to and from the United States, we are increasingly concerned that the dramatic changes in traffic distribution and net revenue flows that we have seen may adversely affect U.S. consumers by raising the cost, and eventually, the price of international telecommunications services originating and terminating in the United States. Moreover, high accounting rates and the depression of traffic volumes caused by high collection rates in certain other countries,[89] may effectively serve as a significant barrier to entry for, or result in discriminatory treatment of, smaller, or newer, U.S. telecommunications service providers.

83. As a result, we believe that is important that we study in greater detail the rapid and substantial growth in the U.S. overseas telecommunications services market over the last decade, and the reasons for the significant increase in payments by U.S. common carriers to foreign communications entities for the settlements of accounts for international services discussed above. As a result, we direct the Chief, Common Carrier Bureau to undertake a study of this issue and report to this Commission in a timely fashion with a recommendation on what, if any, action this

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87 While we have seen some reductions in accounting rates in recent years, these reductions have not been as widespread, as frequent, or as large as, the decline in U.S. tariff rates.

88 For example, South Korea's share of revenues for IMTS originating in the United States increased from 50 percent in 1975 to 88 percent in 1986. Similarly, Japan's share of revenues for IMTS service originating in the United States increased from 50 percent to 87 percent over the same period.

89 The "International Telecommunications Regulations" drafted by the Preparatory Committee for the 1988 World Administrative Telegraph and Telephone Conference (PC-WATTC) to replace the Telegraph and Telephone Regulations (Geneva, 1973) provide that "[e]ach administration or recognized private operating agency shall, subject to the applicable national law, establish the charges to be collected from its customers." See Article 6. The draft of the PC-WATTC also provides that "in establishing these charges, administrations or recognized private operating agencies, should try to avoid too great a dissymmetry between the charges applicable in each direction of the same relation." Id.

Commission should propose to lower international accounting rates for international telecommunications services originating or terminating in the United States. We also invite parties to submit comments on the cost characteristics of international accounting rates, the interrelationship between international accounting rates and national collection rates,[90] and the implications that above-cost international accounting rates may have on U.S. market access concerns.[91] We believe that the reporting requirements we establish in this Order, the Bureau study of international accounting rates, and the comments of interested parties on the issues listed above, will permit us to provide more detailed information to the Congress and the executive branch concerning carriers under our jurisdiction and to determine whether we should, consistent with our statutory mandate concerning the provision of efficient and equitable services at just and reasonable rates, propose additional regulatory action concerning the provision of domestic and international common carrier services.

V. ENHANCED SERVICES

A. The Notice of Inquiry and Proposed Rulemaking

84. The Notice expressed concern that barriers to the provision of enhanced services in other countries, as well as the discriminatory practices engaged in, or service restrictions imposed by, foreign PTTs may inhibit the growth of U.S. enhanced service providers. As a result, the inquiry portion of the Notice sought initial comment on regulatory alternatives that this Commission can, and should, consider to improve the treatment of U.S. enhanced service providers in foreign markets.

85. The rulemaking portion of the Notice invited comments on the desirability of a recommendation by this Commission to the Department of State that the United States seek to gather information on the activities of foreign-owned enhanced service providers through the adoption of a mandatory Recognized Private Operating Agency (RPOA) certification procedure. The Notice also invited comments on whether this Commission should consider requiring foreign enhanced service providers to file quarterly reports detailing gross revenues from sales of enhanced services within the United States or between the United States and foreign points.

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90 See, e.g., "Price Comparisons for International Dial Service in 1987," Industry Analysis Division, Common Carrier Bureau, FCC (March 1988).

91 We invite parties to comment, for example, on the relationship between the United States balance of payments deficit in 1986 of $232,241,323 for telephone, telex, and telegraph service with the 12 member countries of the European Community and the U.S.-E.C. telecommunications trade relationship.

B. Positions of the Parties

86. State, ARINC, ADAPSO, Reuters, IEEE, IBM, Dialcom, C&W and PacTel oppose the adoption of a mandatory RPOA certification approach and assert that the PTTs would use a mandatory RPOA rule either as an excuse not to liberalize further or as a reason to retaliate against U.S. enhanced service providers. Moreover, State argues that the RPOA process which derives from the ITU Convention rather than U.S. domestic regulatory requirement, is not an appropriate information-gathering mechanism and that State maintains that a requirement making the application for recognition of such status mandatory would not elicit information from all foreign-owned international enhanced service providers, since it would cover only those providing public correspondence service. State concludes that although information on foreign enhanced service providers might help to verify claims about the extent of foreign participation in U.S. markets and bolster arguments for opening foreign markets, procedural, substantive and legal questions override those possible benefits.

87. ARINC and ADAPSO agree with the concern expressed in the Notice with the restrictions that U.S. enhanced service providers face in foreign markets. ARINC points out that many nations place severe restrictions on the use of private leased circuits, including prohibitions on resale, shared use, and interconnection with the public switched network. ADAPSO states that the most common problems involve the availability and use of full-period, flat-rate private lines. ADAPSO asserts that, while in many instances such restrictive regulations may be viewed as being related to achieving certain social goals, some regulations appear to be motivated by a desire to shield PTTs from new forms of competition or to protect domestic industry. In any event, ARINC observes that the combined effect of these restrictions is to deny U.S. users, such as the airlines, the benefits of efficient and economical information transport in their international operations.

88. ARINC does not believe, however, that the Commission has jurisdiction to require reports from enhanced service providers. ARINC asserts that agency oversight of enhanced service providers is narrowly circumscribed and observes that the Commission has already rejected calls for mandatory RPOA certification. ADAPSO asserts that while the Commission may have the authority to consider international trade implications under the "public interest" standard, the Commission lacks the resources and statutory authority to negotiate the removal of restrictive trade practices on behalf of the United States.

89. IEEE expresses concern that a mandatory RPOA certification approach would undercut Commission decisions to deregulate international enhanced services and provide other countries with an excuse to mandate RPOA certification or impose other restrictive conditions on the provision of enhanced services internationally. Reuters contends that

telecommunications administrations that have been reluctant to liberalize would find support for their positions in a Commission decision to require RPOA status for foreign-owned enhanced service providers. IBM and Reuters observe that the imposition of an RPOA requirement would create definitional problems, including the possibility that the Commission would have to define another boundary for enhanced services. IBM suggests that the Commission might be forced to try to distinguish between enhanced services that are "telecommunications" services as opposed to "data processing" within the terms of CCITT Recommendation D.1. Dialcom asserts that the process of obtaining RPOA certification would be lengthy and burdensome, and would impede a company's ability to respond quickly to market opportunities to the detriment of U.S. consumers.

90. Graphnet and MCI support the adoption of a mandatory RPOA certification approach to gather information on foreign-owned enhanced service providers. Graphnet argues that to ensure that a mandatory RPOA certification requirement would not only identify foreign-owned enhanced service providers, but would facilitate reciprocal treatment of U.S. firms. C&W supports the establishment of a requirement that enhanced services provide some form of report on their service offerings, but opposes the mandatory RPOA certification approach as an inappropriate vehicle for such a requirement.

B. Discussion

91. In addressing the question of the regulatory treatment of enhanced services in this proceeding, we must balance our concern about the potential detriments of restrictive foreign telecommunications policies and practices with the benefits that we have seen from the development of an unregulated, open, and competitive U.S. enhanced services marketplace. We have, of course, addressed the regulatory treatment of enhanced services generally in a number of proceedings over the course of several decades. For example, in 1971, in our First Computer Inquiry[92], we found that "data processing" services were being offered on a highly competitive basis and we declined to regulate the provision of such services.[93]

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92 Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971) aff'd sub nom. GTE Service Corp. v. FCC, 474 F.2d 724 (2d Cir. 1973); decision on remand, 40 FCC 2d 293 (1973).

93 In reaching this decision, we stated that:

> [w]e see no need to assert regulatory authority over data processing services whether or not such services

92. In our Second Computer Inquiry[94] (Computer II) proceeding, we conducted an extensive reexamination of the most appropriate regulatory framework for the provision of services that combined data processing and communications by carriers and others in light of continuing technological change and the difficulty of drawing an "enduring line of demarcation" between common carrier and data processing services.[95] We adopted a new regulatory definitional scheme with two service categories -- that is, basic, which we defined as "the common carrier offering of transmission capacity for the movement of information," and enhanced, which we defined as "any offering over the telecommunications network which is more than a basic services," and which included data processing services. We again concluded that we should continue to regulate basic services under Title II of the Act [96], but we declined to regulate enhanced services.[97]

> employ communications facilities in order to link the terminals of the subscribers to centralized computers. We believe the market for these services will continue to burgeon and flourish best in the existing competitive environment.
>
> We expect the competitive environment within which data processing services are now being offered to result in substantial public benefit by making available to the public, at reasonable charges, a wider range of existing and new data processing services. We believe that these expectations will continue to be realized in the free give-and-take of the marketplace without the need for and possible burden of rules, regulations and licensing requirements.

Id.

94 Second Computer Inquiry, Final Decision, 77 FCC 2d 384 (Final Decision), modified on reconsideration, Reconsideration Order, 84 FCC 2d 50 (1980) further modified on reconsideration, Further Reconsideration Order, 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), aff'd on second further reconsideration, Memorandum Opinion and Order, FCC 84-190 (released May 4, 1984).

95 Final Decision, 77 FCC 2d at 430, para. 120.

96 Id. at 435, para. 131.

97 We explicitly stated the following:

93. In the Third Computer Inquiry (Computer III), we established a new regulatory framework to govern the participation of AT&T and the BOCs in the enhanced service marketplace, but again refrained from the regulation of enhanced services.[98] Similarly, in the Recognized Private Operating Agency (RPOA) decision, we established a policy that permits the extension of RPOA status by the Department of State to enhanced service providers that offer public correspondence or message services under the International Telecommunication Convention[99] through a simple and voluntary application procedure.[100]

> In our judgment, regulation of enhanced communications services would limit the kinds of services an unregulated vendor could offer, restricting this fast-moving, competitive market. Regulation also would disserve the interest of consumers and the goals of the Communications Act.

See Second Computer Inquiry, Final Decision, 77 FCC 2d 384 at para. 129.

98 See Amendment of Section 64.702 of the Commission's Rules and Regulations, Report and Order, 104 FCC 2d 958 (1986). We have continued to limit our regulatory oversight of enhanced services as before, to the terms and conditions under which a communications common carrier or its affiliates may offer such enhanced services "insofar as such offerings affect traditional Title II concerns that there be no unjust or unreasonable discrimination in the offering of Title II services and that such offerings not cross-subsidize enhanced services or otherwise negatively affect communications ratepayers. See, e.g., Second Computer Inquiry, modified on reconsideration, 84 FCC 2d 50, at 93 (1980).

99 International Telecommunication Union, International Telecommunication Convention, (Edition Nairobi, Kenya) (Geneva, 1982) (ITU). The ITU Convention is the basic instrument creating and defining the role of the ITU. It is a specialized agency of the United Nations whose primary function is to set technical standards for world telecommunications to prevent harmful interference and to develop the basic operating arrangements under which member nations communicate. The United States is a member of the ITU and the ITU Convention has the status of a treaty under United States law.

100 We determined that a program of voluntary RPOA certification was appropriate given the reluctance of PTTs in the past to grant operating agreements to anyone not designated as an RPOA. We stated again, however, that our objective in the area of enhanced services is to encourage competition by removing barriers to entry and unnecessary regulatory burdens. See generally, International Communications Policies Governing Designation of Recognized Private Operating Agencies, Report and Order, CC Docket No. 83-1230 (released May 12, 1986), at paras. 58-59.

94. In the Notice, we sought comment on the desirability of adopting reporting requirements for foreign-owned enhanced service providers or recommending that the Department of State establish mandatory procedures for the grant of RPOA status to foreign-owned enhanced service providers. These proposals arose from the concerns expressed by U.S. industry representatives that certain foreign administrations engage in practices, such as requiring the provision of enhanced services on a monopoly basis by the PTT or imposing onerous services restrictions on alternative enhanced service providers, that adversely affect U.S. enhanced service providers and U.S. consumers.

95. We conclude, however, based on the record in this proceeding, that we should not subject enhanced service providers, including foreign firms, to reporting or any other regulatory requirements at this time. We also conclude that, at this time, we should not recommend to the Department of State a mandatory RPOA certification procedure. In reaching these decisions, we note the strongly held views of U.S. enhanced service providers that our adoption of the proposed information reporting requirements, or any other requirements that would serve to regulate enhanced services, would not serve to advance their interests or those of their customers in either domestic or international markets. We also rely on the opposition of the Department of State to our mandatory RPOA proposal, and find convincing its arguments that, at least at the present time, the costs of this approach outweigh its benefits. Furthermore, these decisions are consistent with our belief that the primary catalyst for the liberalization of enhanced services in other countries will be the success of the U.S. experience and, over time, the experience of other liberalized markets.

96. We conclude that our activities should be focused on the continued development of competitive opportunities for enhanced service providers in the U. S., the refinement of the regulatory provisions we have established for the offering of enhanced services by communications common carriers, the pursuit of pro-competitive policies that lower the cost and price of basic international telecommunications services, and the promotion of liberalized policies for international enhanced services in multilateral and bilateral forums. Indeed, while we remain concerned that restrictive foreign telecommunication policies and practices may have an adverse impact on U.S. firms and U.S. consumers, we have been encouraged that over the past year that a number of countries, including Japan, the United Kingdom, and the Netherlands have moved, or, are moving, towards the liberalization of national regulations governing the provision of enhanced services domestically. Moreover, on January 2, 1988, the President of the United States signed a Free Trade Agreement with Canada that includes an enhanced

services annex that could serve as a model for similar bilateral agreements with other countries for the provision of enhanced services on an unregulated basis.

97. We will continue, of course, to support similar U.S. government efforts to promote increased market opportunities for U.S. enhanced service providers in the international markets. We have provided, for example, technical assistance for ongoing executive branch efforts to negotiate the liberalization of enhanced services in the context of the Uruguay Round of the GATT. Furthermore, we have participated in U.S. government discussions with members of the European Community in an effort to liberalize the provision of enhanced or "value-added services" in Europe. We are optimistic that such efforts will continue, over time, to have the kind of success we have seen in discussions with Canada, Japan, and other countries, and, as a result, we should decline to impose, or to consider the imposition, of unnecessary regulations that could deny to U.S. consumers the benefits of a fully open, competitive, and unregulated enhanced services marketplace.

VI. PAPERWORK REDUCTION ANALYSIS

98. We have analyzed the reporting requirements contained in this Report & Order with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. Sections 3501-20. We have made modifications to our original proposals that will limit the administrative burdens associated with these reporting requirements.[101] Furthermore, any proprietary information filed pursuant to this Order shall be protected under 47 C.F.R. Section 0.459(a).[102] Lastly, pursuant to 5 C.F.R. Part 1320, we shall coordinate with the Office of Management & Budget prior to the effective date of information filing specified hereunder.

VII. REGULATORY FLEXIBILITY ANALYSIS

99. Pursuant to 5 U.S.C. Section 601 et seq., an initial Regulatory Flexibility Analysis was incorporated in the Notice. Written

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101 See, e.g., supra para. 41.

102 We have also made it clear that we will work with the carriers to develop an approach that provides for the public disclosure of carrier procurement in a format that addresses any remaining carrier concerns with regard to confidentiality. See, e.g., para. 42.

comments on the proposals in the Notice's flexibility analysis were requested. Parties did not file separate comments on this analysis; the views of the commenting parties on the proposed information reporting requirements are addressed in each of the four substantive categories discussed in this Order. We conclude that two of the proposed reporting requirements addressed in the Notice are necessary to carry out our duties under the Communications Act of 1934, while two other proposed reporting requirements are not. In order to limit the administrative burdens that may be associated with the two adopted rule changes, however, we have limited the nature of the requirement as discussed herein. We do not believe that these rule changes will cause significant economic impact on small entities. The annual procurement reporting requirement applies only to common carriers with annual revenues exceeding $100 million. The quarterly reporting requirement is a simple extension of an existing reporting requirement for the provision of international services by foreign-owned firms to the provision of domestic interstate long-distance services by foreign-owned firms. We will continue, however, to examine alternatives that serve the statutory purposes of the Communications Act and, at the same time, meet our objective of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. A copy of this Report and Order will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. ORDERING CLAUSES

100. Accordingly, IT IS ORDERED, that pursuant to 47 U.S.C. Sections 151, 154(i)-(j), 201-205, 211, 214, 215, 218, 220, and 403, that Part 43 and Part 63 of our Rules are amended as set forth in Appendix B by adding Rules, effective June 1, 1988, that provide for the following:

(1) That all foreign-owned carriers offering interstate common carrier services within the United States must file revenue and traffic reports with the Common Carrier Bureau on a quarterly basis beginning July 1, 1988, with subsequent reports due on, or before, the 90th day after completion of the calendar quarter;

(2) That all foreign-owned carriers that initiate domestic common carrier services within the United States after July 1, 1988, must notify this Commission within thirty days of their commencement of such service; and

(3) That all Tier I Local Exchange Carriers, their holding companies and affiliates and all interexchange carriers with annual common carrier revenues exceeding $100 million must file with the Common Carrier Bureau annual reports on the preceding year's core equipment procurement beginning July 1,

1988, and for subsequent calendar years by May 1 of the following year.

101. IT IS FURTHER ORDERED, that the Chief, Common Carrier Bureau shall undertake a study of the reasons for the significant increase in payments by U.S. carriers to foreign communications entities for the settlement of accounts for international telecommunications services, and to report to this Commission what, if any, action this Commission should propose to lower international accounting rates for international services originating or terminating in the U.S.

102. IT IS FURTHER ORDERED, pursuant to procedures set forth in Section 1.415 of our Rules, that comments may be filed on the supplemental issues raised herein by May 20, 1988, and reply comments by June 14, 1988. In accordance with the provisions of Section 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments, shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, Northwest, Washington, D.C. 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, D.C. offices.

103. For purposes of this non-restricted proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a notice of inquiry until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission

official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.[103]

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

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103 See generally, Section 1.1231 of our Rules.

APPENDIX A

The Following Parties Filed Comments:

Association of Data Processing Service Organizations (ADAPSO)
American Council of Independent Laboratories (ACIL)
Ameritech Operating Companies (Ameritech)
American Telephone & Telegraph Company (AT&T)
Aeronautical Radio, Inc. and Air Transportation Association of America (filing jointly) (ARINC/ATA)
Avantek, Inc. (Avantek)
Bell Atlantic Operating Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
British Telecom (BT)
Cable & Wireless of North America, Inc. (C&W)
Canadian Embassy (Canada)
Caribbean Automated Long Lines Service (CALLS)
Commission of European Communities (EC Commission)
Computer and Business Equipment Manufacturers Association (CBEMA)
Communications Industry Association of Japan (CIAJ)
Communications Workers of America (CWA)
Contel Corporation (Contel)
Council for International Business (CIB)
Digital Equipment Corporation (DEC)
Department of Defense (DOD)
Dialcom, Inc. (Dialcom)
Donald Dunn (Dunn)
Ericsson North America Inc. (Ericsson)
General DataComm Industries, Inc. (General DataComm)
Graphnet, Inc. (Graphnet)
Institute of Electrical and Electronics Engineers, Inc. (IEEE)
Information Industry Association (IIA)
International Business Machines Corporation (IBM)
ITT World Communications Inc. (ITT)
MCI Communications Corporation (MCI)
Messerschmitt-Bolkow-Blohm, GmbH (MBB)
National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC) [coordinated with the Office of U.S. Trade Representative (USTR), the Office of Management and Budget (OMB), Council of Economic Advisers (CEA), Department of State (State), Department of Treasury (Treasury) and Department of Labor (Labor)]
North American Telecommunications Association (NATA)
NYNEX Corporation (NYNEX)
Pacific Telesis Group (PacTel)

Pan American Satellite (PanAmSat)
Reuters North America Inc. (Reuters)
Rockwell International Corporation (Rockwell)
Siemens Capital Corporation (Siemens)
Southwestern Bell Corporation (SW Bell)
Standard Telephone and Cable PLC (STC)
Telenet Communications Corporation (Telenet)
Turner Broadcasting System, Inc. (Turner)
US Sprint Communications Company (US Sprint)
United States Telephone Association (USTA)
US West Operating Companies (US West)
Vodavi Technology Corporation (Vodavi)
Western Union Telegraph Company (WU)
Zentralverband Elektrontechnik-und Elektronikindustrie e.V. (ZVEI)

The Following Parties Filed Replies:

Ameritech
AT&T
Bell Atlantic
Bell Communications Research, Inc. (Bellcore)
BellSouth
BT
C&W
CALLS
CIAJ
Communications Satellite Corporation (Comsat)
Graphnet
MCI
Motorola, Inc. (Motorola)
PacTel
PanAmSat
Siemens
SW Bell
STC
TRT Telecommunications Corporation (TRT)
US West

APPENDIX B

1. 47 C.F.R. PART 63 SHALL BE AMENDED BY ADDING THE FOLLOWING:

Section 63.801 Annual procurement reports

(a) Tier I local exchange carriers, their holding companies and affiliates, and interexchange carriers with common carrier operations revenues exceeding $100 million annually must file annual procurement reports concerning their purchases of all pieces of network switching and transmission equipment during the preceding calendar year;

(b) the report should be captioned -- "Section 63.801 Report" -- and list by name of manufacturer or supplier, aggregate annual dollar purchases of this equipment in categories determined by the Chief, Common Carrier Bureau; and

(c) annual procurement reports for the preceding year must be filed for 1987 by July 1, 1988, and for subsequent calendar years by May 1 of the following year.

2. 47 C.F.R. Part 43 SHALL BE AMENDED BY ADDING THE FOLLOWING:

Section 43.81 Reports of foreign-owned carriers

(a) All foreign-owned carriers are required to file with the Commission quarterly revenue and traffic reports on all common carrier services they offer within the United States;

(b) A carrier is classified as foreign-owned if a foreign telecommunications entity directly or indirectly owns 15 percent or more of its stock; or an employee, agent, or representative of a foreign telecommunications entity sits on its board or directors;

(c) Foreign telecommunications entities include, but are not necessarily limited to, telecommunications and telecommunications-related equipment manufacturers, equipment suppliers, and service providers;

(d) Initial reports for the calendar year 1987 and for the first quarter of 1988 must be filed by foreign-owned carriers by July 1, 1988;

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 88-48
37320

In the Matter of	)
	)
Referral of Questions From General Communication Incorporated vs. Alascom, Inc. in the United States District Court for the Western District of Washington	)
	)
Request for Declaratory Rulings by General Communication Incorporated Regarding Sham Filings by Alascom, Inc., Before the Federal Communications Commission	)

Memorandum Opinion and Order

Adopted: February 12, 1988 Released: February 26, 1988

By the Commission:

I. Introduction

1. On April 24, 1984, General Communication Incorporated (GCI) filed an antitrust suit against Alascom, Inc. (Alascom), and the American Telephone and Telegraph Company (AT&T) alleging a number of violations of the federal antitrust laws.[1] The Court determined that several of the allegations in the complaint implicated policies and practices of this Commission and referred several issues to us under the doctrine of primary jurisdiction.[2] The court directed the parties to present the referred issues to this Commission.

2. In response to the Court's Referral Order and an order of the Chief, Common Carrier Bureau, establishing procedures for handling the referred issues,[3] GCI filed several petitions for declaratory ruling relating to individual referred issues. In this order, we address GCI's April 4, 1986, petition for declaratory

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[1] General Communication Incorporated v. Alascom, Inc., and American Telephone and Telegraph Co., No. C84-523 (W.D. Wash. filed Apr. 24, 1984) (GCI v. Alascom). AT&T and GCI subsequently reached a settlement of the portion of the suit against AT&T on March 20, 1985, and AT&T was dismissed as a defendant. Pacific Telecom, Inc., Alascom's parent, was later joined as a defendant.

[2] GCI v. Alascom, order of Aug. 26, 1985, amended order, order of Mar. 13, 1986 (Referral Order).

[3] Referral of Questions Regarding General Communication Incorporated v. Alascom, Inc., from the United States District Court for the Western District of Washington, Mimeo No. 4563 (released May 19, 1986).

ruling presenting several issues relating to allegations that Alascom filed sham pleadings with this Commission.[4]

3. In paragraph 23 of its Second Amended Complaint[5] to the court, GCI alleges, in part:

> (a) Defendant Alascom with the assistance of PTI has repeatedly abused its monopoly position and subverted the administrative process by filing sham oppositions before the FCC and in the courts, with knowledge that said oppositions were baseless, and without regard for the success or merit of the claims or protests, for the purpose and with the effect of (1) coercively enforcing its monopolization of telecommunications services; (2) barring GCI and other potential competitors access to the FCC; and (3) delaying, preventing or interfering with the establishment of GCI's and others' competitive telecommunications services in the Alaska interstate interexchange market. The purpose of this conduct was to directly and intentionally delay GCI's entry into the business. Alascom's conduct had no other justification.

4. Paragraph 6 of the Referral Order subsequently referred the following questions to this Commission:

> (a) Alascom contends that the FCC should determine, with respect to specific oppositions, pleadings, or other filings and identified by GCI, whether Alascom has subverted or attempted to subvert the administrative process by filing sham and baseless pleadings before the FCC as alleged in paragraphs 23(a), 24(d-f), and 28 of the Second Amended Complaint.
>
> (b) GCI respectfully contends that referral of any sham issues to the FCC for any proceeding is inappropriate as a matter of law. Should the court determine that such issues should be submitted for consideration by the FCC, however, GCI contends that such issues should be limited to those requested by the FCC: (i) whether the subject Alascom pleadings were responsive to the issues raised in the pleadings;

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[4] Alascom filed a reply to the GCI Petition on June 9, 1986. GCI filed a response to that reply on July 9, 1986. Subsequently, GCI filed a supplemental petition on July 7, 1987, submitting additional support for its allegations. Alascom replied to GCI's supplemental petition on August 17, 1987, and GCI responded on September 17, 1987.

[5] GCI v. Alascom, filed Oct. 17, 1985. GCI also alleged in Paragraphs 24(d)-(f) and 28 of the Second Amended Complaint, that Alascom had filed baseless and sham pleadings in opposing a Settlement Agreement entered into between GCI and AT&T in March 1985. GCI appears to have abandoned that allegation since it did not address the point in its comments. The Commission order accepting the settlement agreement was ultimately reversed on appeal. Alascom, Inc. v. FCC, No. 85-1279 (D.C. Cir. Jan. 27, 1987).

and (ii) whether they assisted the Agency in resolving the regulatory issues under consideration at the time.

(c) GCI further contends that, in any event, sham issues relating to Alascom's conduct before the Alaska Industrial Development Authority and the Rural Electrification Administration (paragraphs 23(a)(4) and 23(a)(5) of the Amended Complaint) should not be referred to the FCC.[6]

II. Discussion

A. Overview

5. The sham pleading issues referred by the court implicate numerous Alascom pleadings in connection with rulemaking proceedings and petitions to deny or other oppositions to Section 214 applications[7] by potential entrants into the Alaska interstate telecommunication market. The referred issues also raise questions concerning the interpretation of several of our decisions involving the development of the policies relating to the conditions under which interstate telecommunication services were to be provided in Alaska.[8] However, the issues generally fall into broad groupings that are discussed below.

6. Section B identifies our concern with the impact any rulings by the court on these sham pleading questions could have on our administrative processes and our ability to receive full and open comment on issues before us. Section B also discusses the standard that we will apply in resolving the sham pleading issues referred by the court. Section C outlines our analysis of the sham pleading issues presented by the court's Referral Order and the pleadings filed by the parties in this declaratory ruling proceeding.

B. Scope of referral and standard of analysis

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[6] Referral Order at 5-6. As GCI notes, the questions relating to proceedings before the Alaska Industrial Development Authority and the Rural Electrification Administration are not matters on which we have any particular expertise. Accordingly, we do not address any issue relating to those proceedings.

[7] 47 U.S.C. § 214. Carriers wishing to establish service generally must first obtain certification of the necessary lines pursuant to Section 214 of the Communications Act.

[8] Coincident with the debate over the development of the policies relating to the appropriate market structure for Alaska, we were addressing the implementation of the rate integration policy for interstate MTS and WATS service for Alaska. Those issues, as they relate to the antitrust suit, were discussed in Referral of Questions from General Communication Incorporated v. Alascom, Inc., FCC 87-269 (released Aug. 11, 1987).

7. The parties, as reflected by their inability to agree on the language in the referral order[9] and by their statements of the rulings requested in their pleadings before us, have divergent positions on the appropriate scope of this declaratory ruling proceeding. GCI, in its statement of the issues for referral, as stated in the Referral Order, contended that our role in resolving the sham pleading issue should be limited to determining (i) whether the subject Alascom pleadings were responsive to the issues raised in the relevant Commission proceedings; and (ii) whether those pleadings assisted this Commission in resolving the regulatory issues that were under consideration at the time.[10] However, in its petition for declaratory ruling before this Commission, GCI posits a different role for this Commission by asking that we limit our consideration to the issuance of rulings on nineteen specific subjects that can generally be characterized as either (a) requesting our confirmation that Alascom made certain allegations and that we found these arguments unsupported and rejected them, or (b) requesting that we confirm the holdings in certain specified decisions of this agency.[11] GCI specifically requests that we refrain from addressing questions of intent, leaving those issues to be heard by the antitrust court.

8. On the other hand, Alascom argues that we should determine whether it subverted the administrative process by filing sham pleadings before this Commission. Alascom asserts that it is not sufficient to show that an argument was rejected, or that, after being advanced in one proceeding, it was advanced in another. Alascom also contends that it is unnecessary to determine whether its arguments were legally or factually correct. Rather, Alascom states that the applicable standard is whether, given the context in which they were filed, the pleadings had a reasonable basis in law or fact. Alascom submits that important First Amendment rights would be compromised if pleadings reasonably based in law or fact are the subject of administrative or judicial sanctions.

9. The antitrust concept of sham pleadings must be examined in order to determine the standard we should apply. As a general principle of law, antitrust liability does not arise from a party's exercise of its right to participate in legislative, judicial, or administrative proceedings and to petition its government for support or relief.[12] However, a limited exception to the general

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9 See para. 4, supra.

10 GCI states that such a Commission role is consistent with the position FCC counsel advocated before the district court. However, as Alascom notes, FCC counsel actually stated the second criterion to be "whether they assisted or reasonably could have been expected to assist the agency in resolving the regulatory issues under consideration at the time." FCC Response to Parties' Statement of Issues at 8, Dec. 26, 1984, in GCI v. Alascom.

11 GCI Petition at 51-56. The requested rulings are set forth in Appendix A.

12 Eastern Railroad Conference v. Noerr Motor Freight, 365 U.S. 127 (1961).

rule has developed. Under that exception, abuse of process through a pattern of filing sham pleadings before administrative agencies, or other governmental bodies, may give rise to antitrust liability when the pleadings are baseless and effectively work to deny a competitor access to the administrative agency or other body.[13]

10. In this referral proceeding, we seek to aid the court in making its antitrust determination. It is the district court, not this Commission, that must make the ultimate determination of whether Alascom has filed any sham pleadings within the meaning of the antitrust laws. However, as the administrative agency responsible for the regulation of the telecommunication industry under the Communications Act, we believe that we can aid the court in its analysis by placing the various arguments in the context of our procedural rules and the regulatory environment at the time the pleadings were filed. Attempting to determine what constitutes a sham pleading without addressing the regulatory environment, as GCI's limited ruling requests would have us do, is to avoid the entire issue. That, in our view, would not assist the court, and we decline to take such a narrow view of our responsibility.[14]

11. Under the Communications Act,[15] this Commission is charged with, inter alia, regulating the provision of interstate common carriage services. To accomplish this statutory mandate, Congress has given us the authority to establish rules to govern the conduct of our proceedings.[16] We have adopted rules, codified in Title 47 of the Code of Federal Regulations, that give interested persons an opportunity to comment on various matters before this Commission, including an opportunity to comment on the pleadings of others in rulemaking and Section 214

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13 California Motor Transportation Co. v. Trucking Unlimited, 404 U.S. 508 (1972).

14 As noted above, GCI's declaratory ruling request can essentially be characterized as either (a) requesting that we confirm that Alascom made certain allegations and that we found these arguments unsupported and rejected them, or (b) requesting that we confirm the holdings in certain specified decisions of this agency. A referral to this Commission would not have been necessary to ascertain the limited information needed to answer GCI's requested rulings. The confirmation of whether an argument was made by Alascom in a particular pleading does not resolve the ultimate question of whether the pleading containing that argument constituted a sham pleading. The discovery and stipulation procedures of the federal rules of civil procedure under the supervision of the district court appear to be more appropriate for this purpose than rulings by this Commission in referral proceedings. Furthermore, orders of this Commission speak for themselves, without further proof or authentication thereof, 47 U.S.C. § 154(m). Accordingly, while we respond to the matters referred to us, we do not respond to each of GCI's specific requests.

15 47 U.S.C. § 151, et seq.

16 47 U.S.C. § 154(i), (j).

application proceedings.

12. We also have adopted rules that address the matter of proper pleading. For example, section 1.52 of our rules,[17] provides that an attorney's signature on a document constitutes a certification that "to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Also, as discussed in this section, we have addressed questions of abuse of process in conjunction with strike petitions.

13. Allegations of sham pleadings before this Commission raise issues that go to the heart of our administrative process and our ability to make the public interest determinations which the Communications Act entrusts to this Commission. In evaluating allegations of abuse of our processes, we must strike a delicate balance between protecting the public's right to participate in our proceedings and our own duty to protect the public interest by not "allowing the administrative process to be obstructed or overwhelmed by captious or purely obstructive protests."[18] The adoption of overly restrictive limitations, in whatever form, on a person's right to present this Commission with open and candid comments in the appropriate procedural context will almost certainly have a chilling effect on the open expression of views before this Commission, as well as other agencies, and may raise questions of constitutional propriety.[19] Our administrative processes rely on and are built around this open exchange of information and points of view. Our experience indicates that in an atmosphere of open comment, those positions lacking in merit are quickly brought to light.

14. In KQED, a party was making an argument concerning the broadcaster's operating procedures that was also being raised by that party in a pending petition for reconsideration of an earlier licensing proceeding. There, we concluded that the petitioning party raised a legitimate public policy question that it was entitled to raise in the subsequent proceeding despite the fact that it had been raised as well in the earlier proceeding. We recognized that while it is a burden for a license applicant to defend his application, "such burdens are an inseparable part of the statutory scheme under which the applicant seeks his authorization."[20] Thus, while we do not encourage repetitive claims, we have held that the party alleging an abuse of administrative process must demonstrate that the pleadings in question do not raise legitimate public interest issues.

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17 47 C.F.R. § 1.52.

18 United Church of Christ v. FCC, 359 F.2d 994, 1005 (1966); KQED, Inc., 88 FCC 2d 1159 (1982), rev. on other grounds sub nom. California Public Broadcasting Forum v. FCC, 752 F. 2d 670 (D.C. Cir. 1975).

19 See, e.g., Eastern Railroad Conference v. Noerr Motor Freight, 365 U.S. 127 (1961).

20 KQED, Inc., 88 FCC 2d at 1167, quoting from Radio Carrollton, 69 FCC 2d 1139, 1149 (1978).

15. Balancing these various interests with the fact that we are not the ultimate decisionmaker on the antitrust question before the court, the standard we apply in determining whether the pleadings filed abused our processes is one that asks whether the pleadings filed by Alascom were captious or purely obstructive. This standard includes determining whether the pleadings in question (a) were responsive to the issues in the proceeding, and (b) aided, or reasonably could have been expected to aid, in the resolution of legal, factual, or public policy questions. This is consistent with the standard suggested by GCI in its statement in the Referral Order of the appropriate scope of this Commission's consideration of the sham pleading issue. However, the examination is not limited to those criteria, but must also recognize Alascom's right to file pleadings designed to protect its procedural or substantive rights.

C. Sham pleading allegations

16. GCI has submitted allegations of sham pleadings filed by Alascom in its complaint to the court and in its declaratory ruling petition filed with this Commission. The allegations can be divided into two basic groups: (a) that Alascom has repeatedly and without basis represented that it has a special status in the form of a "de jure monopoly" in Alaska;[21] and (b) that Alascom repeatedly, and

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[21] Specifically, GCI alleges in Paragraph 23(a)(1) of the Second Amended Complaint that:

> Since the early 1970s, Alascom with the assistance of PTI has filed opposition pleadings, in many instances with voluminous attachments, in all FCC policy proceedings involving the provision of competitive services, and has repeatedly opposed all applications filed with the FCC for competitive entry into the Alaska interstate interexchange market for no purpose other than to preserve its monopoly position and to directly interfere with entrance into the market of potential competitors. In rulemaking proceedings before the FCC, Alascom has without exception sought to erect barriers to entry by proposing that the FCC adopt special certification policies to be applied in cases involving potential competitors of Alascom. These barriers would require applicant carriers other than Alascom seeking to provide services to Alaska to carry a heavier burden than applicants seeking to provide identical services outside Alaska and would provide a further opportunity for Alascom to frustrate attempts to introduce competition in the Alaska interstate interexchange market. In its oppositions in application proceedings, Alascom has repeatedly misrepresented that it is the sole entity authorized to provide interstate telecommunications service to and from Alaska with full knowledge that such claim is baseless and had been rejected by the FCC at the time it approved RCA Alascom's acquisition of the Alaskan Communications Service. Furthermore, these claims were made with the knowledge that the FCC had subsequently reiterated its position that Alascom has never been awarded a de jure monopoly in the Alaska interstate interexchange market.

without basis, argued that competition in the Alaska interstate market would not serve the public interest.[22] After reviewing the record before us, we conclude that the challenged Alascom pleadings addressed legitimate public policy questions in the various proceedings in which the question of the proper competitive policy for the provision of interstate telecommunication services to Alaska was at issue. Based on the record before us, and as explained in more detail below, we find that Alascom's pleadings in question were not captious or purely obstructive of this Commission's processes.[23]

1. Special status contentions

17. GCI asserts that this Commission repeatedly rejected the Alascom contention that we had granted Alascom a "de jure monopoly" and definitively rejected that argument in the January 1980 Order in CC Docket No. 78-72[24] in response to an Alascom Petition for Clarification or Partial Reconsideration of the Supplemental Notice of Inquiry and Proposed Rulemaking (Supplemental Notice).[25] GCI argues that Alascom continued to rely on the "de jure monopoly" argument after the release of the January 1980 Order in an effort to keep GCI and others out of the Alaska interstate telecommunication market.

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22 GCI specifically states in Paragraph 23 of its Second Amended Complaint that:

> (a)(2) In its sham oppositions to the applications filed by GCI and other potential competitors, Alascom with the assistance of PTI repeatedly and deliberately misrepresented to the FCC that competition would have a crippling effect on its services, deplete its revenues and adversely affect the availability of telecommunication service in Alaska, yet fully knowing and having reason to know that said representations were false.
>
> (a)(3) Alascom's baseless oppositions to FCC applications have been filed in order to directly delay and harass GCI and other potential entrants or to cause them to amend their applications so as to exclude service to Alaska. Confronted with Alascom's history of repeated protests, petitions for reconsideration, and appeals and in order to avoid the delays and costs engendered by Alascom's meritless claims, most applicants have amended their applications to delete reference to Alaska without regard to the lack of merit of Alascom's contentions.

23 We believe that if GCI had direct evidence of intentional abuse of this Commission's administrative processes by Alascom that went beyond the intent exhibited by the filing of the pleadings in question, it should have been submitted with the referral materials. If direct evidence had been proffered, a different result might have been indicated.

24 MTS and WATS Market Structure Inquiry, 75 FCC 2d 644 (1980).

25 MTS and WATS Market Structure Inquiry, 73 FCC 2d 222 (1979).

18. Alascom contends that its argument cannot fairly be capsulized in the single phrase, "de jure monopoly." It asserts that it relied on early Commission decisions that found competition to be infeasible in Alaska and reasonably took the position that until the communication market in Alaska developed to the point that this Commission would be able to find that the public interest was better served by competition, we could not authorize such competition. Alascom argues that after being apprised in the CC Docket No. 78-72 Third Supplemental Notice[26] that this Commission believed that the Communications Act contains a presumption in favor of competition, Alascom continued to press its contrary views and properly preserved its rights by filing in both general rulemaking[27] and individual application proceedings. Alascom further contends that it was aware that its special status was subject to alteration by this Commission on a proper record, and, thus, it sought to avoid that outcome without the requisite findings, conclusions, and full Commission consideration. Alascom submits that there is no doubt that it pressed its views as long as there was a reasonable basis for doing so, but that this was its legal right under the Communications Act and the First Amendment.

19. The evaluation of the merits of this dispute requires an understanding of the development of our regulatory policies for telecommunication service to Alaska. Alascom's argument that it had a special regulatory status with respect to the provision of telecommunication service to Alaska arises from two decisions in the early 1970s. Alascom first points to statements in our DOMSAT III decision[28] which developed policies for the provision of domestic satellite service, including service to Alaska. DOMSAT III adopted a policy for Alaska that required applicants for satellite facilities to Alaska to provide specialized carriers with access to the satellite system facilities used for interstate MTS. We explained that "[w]e do not regard this policy as unduly prejudicial to RCA Alascom, since no duplicate facilities will be authorized for the provision of the interstate [MTS] service which concededly constitutes the bulk of the interstate business and revenues that are its 'lifeblood.'" Alascom also notes that in the DOMSAT III decision, we described the showing that specialized carriers would have to make in any application to serve Alaska. We stated that:

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26 MTS and WATS Market Structure Inquiry, 81 FCC 2d 177 (1980).

27 GCI alleges that Alascom filed pleadings alleging its "de jure monopoly" argument in all rulemaking proceedings relating to possible entry of other carriers in the interstate Alaska telecommunication market following DOMSAT III. Our discussion herein focuses largely on Alascom's pleadings in the context of CC Docket No. 78-72, which was the principal rulemaking proceeding on the interstate Alaska entry question. The analysis of Alascom's filings in that proceeding are equally applicable to similar contentions concerning the other rulemaking proceedings. Thus, we do not discuss each individual rulemaking proceding.

28 Establishment of Domestic Satellite Facilities by Nongovernmental Entities, 38 FCC 2d 665, 696 (1972).

> such applicants will be required to show with specificity how a grant of their application will serve the public interest and how they will provide tangible benefits in the form of new and better service, lower rates, etc. We will also consider the impact of the grant on the ability of RCA Alascom to discharge its responsibility to Alaska.[29]

20. Alascom says its claim to special regulatory status was also supported by a decision on the application of Western Union International, Inc., for authorization to construct facilities to provide record services to Alaska. There, this Commission's Telegraph Committee[30] rejected the application because the Committee found that the communication market in Alaska "now and for the foreseeable future is too marginal to support a reasonable expectation that competition may have some beneficial effect such as maintaining good service or improving it."[31]

21. In responding to the questions presented by the referral, we need not specify the exact meaning or scope of the specific language or holdings of these two decisions. Rather, the question is whether Alascom's assertion in later proceedings that these decisions reflected the established public policy was sham in the context of the issues before us.

22. Since this Commission and the Telegraph Committee had identified the developing nature of the Alaska telecommunication market as a factor in DOMSAT III and in the Western Union International order, it was a continuing public policy question whether the market conditions had changed sufficiently to permit the authorization of additional entrants in the Alaska interstate telecommunication market. Since a revised policy had not been adopted by a final order, Alascom was clearly entitled to raise these earlier decisions in either rulemaking or application proceedings as part of its argument that we should not alter the existing policy, or authorize new entrants without requiring applicants to make the showings described in those decisions.

23. GCI also argues that the January 1980 Order definitively rejected Alascom's contention that Alascom had a special status with respect to the provision of interstate telecommunication services to Alaska.[32] In the Supplemental Notice in CC Docket No. 78-72, we had directed persons believing that MTS and WATS service should be provided on a sole-source basis in any market, or submarket, to make

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29 Id.

30 The Telegraph Committee was a three-member body of FCC Commissioners that acted on certain matters under authority delegated by the Commission. That Committee has subsequently been abolished.

31 Western Union International, Inc., file no. T-C-2274, FCC 71M-1405 at 45 (released Aug. 30, 1971).

32 GCI Petition at 4.

certain showings, including the use of an industry model to quantify the harm that would flow from competitive entry in that market, or submarket, to support the contention that restrictions should be placed on entry into the interstate MTS and WATS market. Alascom responded to the Supplemental Notice by filing a petition for clarification or for partial reconsideration of the Supplemental Notice. That petition requested a ruling that the Alaska interstate market was not at issue in the proceeding.[33] This Commission issued the January 1980 Order to clarify the scope of the entry policy phase of CC Docket No. 78-72.

24. In the January 1980 Order, we determined that Alascom had not obtained any special status when it acquired facilities from the United States Air Force. Furthermore, in light of the subsequent court decision in Execunet I,[34] we concluded that the language in the DOMSAT III decision would not support a Section 214(c) condition on any facility authorizations for the provision of service to Alaska. Accordingly, we directed Alascom to file industry model comments if it believed that it should have a sole-source status with respect to interstate MTS and WATS services for the Alaska submarket.

25. From early 1978 when we initiated CC Docket No. 78-72 until early May 1983 when we denied Alascom's petition for reconsideration of the Second Report and Order,[35] the question of whether a competitive or monopoly market structure was in the public interest for the provision of interstate MTS and WATS service for Alaska was explicitly before this Commission in CC Docket No. 78-72. Thus, as Alascom has argued here, the January 1980 Order did not constitute a final determination by this Commission that competition in the interstate Alaska MTS-WATS market would or would not be desirable. Rather, it was a determination relating to the scope of the CC Docket No. 78-72 proceeding that did not finally resolve market structure issues. The nature of the January 1980 Order is demonstrated, as Alascom notes in its reply to GCI's petition, by the fact that the subsequent decision adopting an open entry policy for the MTS and WATS market in the contiguous states did not resolve the

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33 In this pleading, Alascom requested that we recognize our prior determination that Alascom was to be the sole-source provider of long-lines interstate service to Alaska and indicate that we did not intend to revisit that question in CC Docket No. 78-72, or, if we did intend to revisit that question, that we specifically state that our prior determinations remain in effect until the conclusion of the proceeding. Alascom Petition for Clarification or Partial Reconsideration at 4 (Oct. 1, 1979). While Alascom did assert that it had been granted a sole-source status in DOMSAT III, it also acknowledged that the DOMSAT III determination could be revisited upon a proper record. Thus, characterization of Alascom's position simply and without elaboration as the assertion that it had a "de jure monopoly" does not accurately describe the argument Alascom actually made.

34 MCI Telecommunications Inc. v. FCC, 561 F.2d 365 (D.C. Cir. 1977), cert. denied, 434 U.S. 1040 (1978).

35 MTS and WATS Market Structure Inquiry, 92 FCC 2d 787 (1982), recon. denied, FCC 83-212 (released May 9, 1983).

Alaska market structure issues relating to the provision of interstate MTS and WATS service for Alaska. Rather, this Commission allowed Alascom a further opportunity to present an economic model detailing the adverse consequences it believed would result from authorizing competitive entry in the Alaska interstate MTS and WATS market. Thus, Alascom was entitled to contend that interstate Alaska MTS-WATS competition should be prohibited until this Commission resolved that question in 1983.[36]

26. GCI also cites Alascom's oppositions to Section 214 applications proposing interstate telecommunication service to Alaska as examples of unjustified obstruction. Alascom is correct in its claim that it was entitled to argue in petitions to deny applications of other carriers proposing to offer interstate service to Alaska that competitive entry should not be authorized until this Commission issued a final order resolving the market structure question. Execunet I established that authorized facilities could be used to provide any service technically feasible without further authorization, absent a valid Section 214(c) condition on such facility authorization. However, Execunet I did not relieve this Commission of its obligation to make a public interest determination when facility authorizations are granted pursuant to Section 214(a).[37] This Commission clearly could have made a decision on the competitive entry question in either an application proceeding or a rulemaking proceeding. Thus, the issues relating to market entry were present in the Section 214 applications, and Alascom's petitions for partial denial or for conditional grant of those applications filed prior to the conclusion of the Alaska phase of CC Docket No. 78-72 were not improper procedurally as they addressed the question of market structure that remained at issue.[38] In fact, in those cases in which the applicant did not amend its

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[36] GCI may be contending that Alascom should have refrained from citing the DOMSAT III language after the January 1980 Order was issued. Even if the January 1980 Order can be construed as concluding that the DOMSAT III language would not be afforded any weight in the final resolution of the entry policy question, subsequent citations of DOMSAT III would not render the entire pleading a sham because the ultimate question of open or closed entry clearly remained open until 1983. Moreover, Alascom could properly preserve its position with respect to the effect of DOMSAT III until this Commission reached a decision that would be classified as final for purposes of an appeal. Alascom initially filed a notice of appeal that it later withdrew, Alascom Motion to Dismiss in Alascom, Inc. v. FCC, Case No. 80-1247 (D.C. Cir. Nov. 13, 1980), because of the interlocutory nature of the January 1980 Order.

[37] GCI's assertion that the reference in the January 1980 Order to pending applications for service to Alaska and our desire to resolve the special status question in advance of those applications does not alter this conclusion. Each application had to be addressed on its own merits.

[38] As Alascom notes, these filings protected against claims of waiver and/or fulfilled the requirement of exhausting administrative remedies before seeking appellate review. Alascom Reply at 51. While no appeals were ultimately taken

application to delete Alaska from the proposed service area, the orders granting the applications each were conditioned on the outcome of CC Docket No. 78-72.[39]

2. Contentions that monopoly service in Alaska was in the public interest

27. GCI's second general sham pleading allegation is that Alascom repeatedly represented in rulemaking and application proceedings that competition would adversely affect the availability of telecommunication service in Alaska, even though Alascom knew, or had reason to know, that these representations were false. GCI alleges that these oppositions were filed in order to delay and harass GCI and other potential entrants or to cause them to amend their applications so as to exclude service to Alaska. GCI contends that Alascom's bad faith is underscored by the fact that it did not file the economic model in its comments as required by the Supplemental Notice. GCI further alleges that Alascom continued to argue that a monopoly structure for Alaska would serve the public interest even though its argument was repeatedly rejected for failure to provide supporting evidence.

28. GCI asserts in its declaratory ruling petition that the economic model Alascom eventually filed in response to the Third Supplemental Notice was an ex post facto attempt to justify its argument that a monopoly market structure was in the public interest in Alaska. In its July 1987 supplemental filing, GCI submits that Alascom had never studied the effect of competition in Alaska before CC Docket No. 78-72, and thus had no factual basis for making its argument that monopoly was in the public interest. It also alleges that Alascom knew of several of the deficiencies in its economic model before Alascom filed that model and made no effort to correct or quantify them. GCI asserts that following the criticism of its economic model, Alascom developed a revised model that showed far less adverse effects from opening the interstate market to competition than did its original model. GCI states that this revised model was never shown to this Commission, and that Alascom continued to defend its original model.

29. GCI submits that this Commission's findings that the study contained numerous factual and logical inconsistencies speaks for itself, and observes that none of the dire consequences that Alascom alleged would result if competitive entry were authorized for interstate service to Alaska in its pleadings in CC Docket No. 78-72 have occurred. Accordingly, GCI asserts that it is impossible to conclude that Alascom ever had any factual basis for asserting that competition would significantly degrade telecommunication services to the people of Alaska.

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because of the resolution of CC Docket No. 78-72, a party must be permitted to protect its procedural rights until such time as the ultimate issues are resolved with finality.

[39] See, e.g., Applications of General Communication Incorporated, file nos. W-P-C-3345 et al, Mimeo No. 001099 (released May 27, 1981).

30. Alascom responds that it had made factual submissions to this Commission prior to the submission of its economic model that supported its contention that new entry in the Alaska interstate market would be contrary to the public interest and harmful to Alascom. Alascom asserts that its failure to file an economic model with its Supplemental Notice comments cannot be criticized in light of this Commission's finding in the Third Supplemental Notice that a variety of conditions made it impossible as a practical matter for Alascom to have performed the kind of economic analysis that we had requested. Alascom states that it believes that the assumptions and methodology used in its economic model were reasonable and accurately foretold the amount of traffic diversion that in fact occurred when full competition was authorized in Alaska. It asserts that reasonable people can differ about what assumptions should be used in any economic study; however, it argues that the fact that the assumptions selected were criticized does not mean that the pleadings were a sham. Alascom submits that for GCI to prevail on this point, it must show that this Commission had rejected Alascom's arguments and had declared an open entry policy for Alaska in advance of the Second Report and Order. Alascom argues that nothing GCI has filed in this proceeding provides any evidence that Alascom has filed sham pleadings.[40] Alascom also filed an affidavit relating to the document GCI calls a revised economic model.[41] The affidavit says that document is merely an incomplete work product. Alascom asserts that it is pure speculation to state what that study would or would not have shown if the study had been completed.

31. This sham pleading allegation also must be evaluated in the context of the CC Docket No. 78-72 proceeding. From early 1978 when we initiated CC Docket No. 78-72 until early May 1983 when we denied Alascom's petition for reconsideration of the Second Report and Order, the question of whether the public interest would best be served by a competitive or monopoly market structure for the provision of interstate MTS and WATS service for Alaska was clearly before this Commission. In that docket, Alascom actively asserted that a monopoly market structure for the provision of interstate MTS and WATS service to Alaska would serve the public interest. Alascom filed comments in response to our Supplemental Notice in CC Docket No. 78-72 approximately one month after the release of the January 1980 Order. In those comments, Alascom asserted that adverse effects would result if competitive entry were authorized for Alaska, although it did not file an economic model along the lines of that requested in the Supplemental Notice. Such a model would have quantified the adverse effects Alascom believed would result from the authorization of competitive entry in the Alaska interstate MTS and WATS market.

32. In the Third Supplemental Notice, we concluded that we would not

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40 Alascom argues that GCI's supplemental filing is procedurally defective because it was filed outside the established pleading cycle and was not accompanied by a motion. We find that in the interest of completeness, the public interest will be served if we consider the supplemental filing and the responsive comments to it.

41 Affidavit of Ronald P. Collins, Alascom Reply to GCI Supplemental Filing at App. B.

terminate the inquiry with respect to the Alaska market. We gave Alascom another opportunity to submit an economic model since we found that it would have been difficult to make the necessary assumptions regarding separations, settlements, and rates at the time the industry model comments were due. We concluded that unless Alascom quantified the adverse effects of competitive entry in Alaska with an appropriate economic model, we would apply an open-entry policy to the provision of interstate MTS and WATS service to Alaska.

33. Alascom responded to the Third Supplemental Notice by filing an economic model in an effort to quantify what it perceived to be the adverse effects of competitive entry. Our Second Report and Order detailed numerous deficiencies in Alascom's model. This Commission found that those deficiencies undermined the credibility of Alascom's model and its results.[42] However, the fact that we found many of Alascom's assumptions deficient is not the same as finding that the economic model and the associated comments were sham pleadings.

34. Alascom's model was submitted in response to a Commission directive that if Alascom were to prevail on its assertion that a monopoly market structure was in the public interest for Alaska, it would have to quantify the adverse effects of competitive entry. The Alascom filing thus was unquestionably addressing an issue before this Commission. Moreover, the model provided economic data, based on one set of assumptions, that aided the Commission in its analysis of the effects that entry would have on Alascom and the provision of telecommunication services in Alaska. As GCI notes, this was the first attempt to quantify the effects of competitive entry in the Alaska interstate MTS and WATS market. Thus, the economic model allowed us to evaluate more accurately the effects of competitive entry than a theoretical analysis would have permitted. Moreover, we made several findings based on portions of the data submitted.[43]

35. GCI alleges that depositions taken during the court discovery process demonstrate that Alascom knew its assumptions were faulty.[44] GCI also alleges that little supervision of the development of the study was provided. We

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[42] MTS and WATS Market Structure Inquiry, 92 FCC 2d at 812-30.

[43] Alascom's model was useful in deciding to defer determining whether duplicative entry on bush routes would be permitted to the bush earth station ownership proceeding. We subsequently found in the bush proceeding that duplicative entry on those routes would not serve the public interest. The Alascom model also assisted us in determining that entry on the routes outside the three major cities would probably be most viable if done by resale because it appeared that all of the economies of scale had not been achieved on those routes. Second Report and Order, 92 FCC 2d at 839, 842.

[44] The deposition of Rebecca Stevens, an Alascom employee, indicates that she was uncertain about the reliability of several assumptions, particularly regarding the use of multipliers to extrapolate the traffic diversion numbers from the first phase model to a full competitive entry model. See GCI Supplemental Filing at App. F.

are not persuaded that these depositions establish that the study filed with this Commission was a sham. The development of the study required that many assumptions be made, including a rate structure for the entrant, the scope of that entrant's operations, the number of persons who would switch from Alascom to new entrant, etc. Alascom revealed in the record the assumptions it was making and the methodology it was using. We find that the discovery materials submitted by GCI do not establish that the economic model was a sham filing. Nor do we find that GCI has demonstrated that Alascom had a revised economic model that it should have filed with us. Alascom states that the materials GCI describes as another model or study were merely incomplete work products. While it appears that Alascom prepared a variety of studies showing that some of Alascom's earlier assumptions may have been flawed, it is not clear that Alascom had prepared a complete revision. We also note that Alascom requested an opportunity to file rebuttal comments, including a revised study responding to some of the criticisms of its earlier economic model. While the Chief, Common Carrier Bureau, granted Alascom an opportunity to file rebuttal comments, he denied its request for additional time to prepare a revised model. He concluded that it would not be appropriate to introduce new, revised studies of economic impact in rebuttal comments.[45] Accordingly, even assuming that it had in fact developed a complete revised model, we cannot now fault Alascom for not filing it with us.

36. Finally, we address GCI's contention that Alascom repeatedly opposed applications of competitive entrants proposing entry into the Alaska interstate market with a baseless argument that a monopoly market structure for Alaska was in the public interest. Since the question of the appropriate interstate market structure for Alaska was pending in CC Docket No. 78-72, the market structure question was equally at issue in each of the applications to serve Alaska. Given the existence of the rulemaking proceeding on the proper market structure for Alaska, and Alascom's assertion in that proceeding that a monopoly structure should be adopted, Alascom's filing of oppositions to the applications of potential entrants was not inappropriate. Alascom raised the market structure issue in each application proceeding to protect its rights to appeal an adverse ruling. Alascom was not required to develop the details of its case in each opposition to an application, but could rely on the record being developed in the rulemaking proceeding. In fact, as noted earlier, the applications of competitive entrants in the Alaska interstate telecommunication market were conditioned on the outcome of the rulemaking proceedings in CC Docket No. 78- 72. Therefore, we conclude that when Alascom opposed, or sought conditional grants, of such applications, it was addressing legitimate public policy questions that were before this agency and was not abusing our administrative process.

37. Accordingly, IT IS ORDERED,pursuant to Sections 4(i) and (j) of the Communications Act, 47 U.S.C. §§ 154(i) and (j), that the Petition for Declaratory Ruling filed by General Communication Incorporated IS DENIED.

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45 MTS and WATS Market Structure Inquiry, Mimeo No. 0014443 at 2 (released Jun. 11, 1981).

38. IT IS FURTHER ORDERED, that this Memorandum Opinion and Order be transmitted forthwith to the Honorable John C. Coughenour, Judge, United States District Court for the Western District of Washington.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

RULINGS REQUESTED BY GCI

1. Beginning at least as early as 1987, Alascom commenced a pattern or practice of challenging competitive entry in Alaska by arguing that it had been granted a de jure monopoly in Alaska.

2. Alascom has never had, and neither the Commission nor Congress has ever granted it, a de jure monopoly in Alaska.

3. The Commission has consistently rejected Alascom's contention that it had been granted a de jure monopoly with respect to MTS-WATS or any other telecommunication service. Memorandum Opinion and Order (January 30, 1980) (App. No. 2 at 646-48); Second Report and Order (November 30, 1982) (App. No. 4).

4. The Western Union Order (released August 30, 1971) did not grant Alascom a de jure monopoly and has never been so construed. Memorandum Opinion and Order (January 30, 1980) (App. No. 2 at 646); Second Report and Order (November 30, 1982) (App. No. 4 at 798-801).

5. The DOMSAT II Order, 35 F.C.C. 2d 844 (1972), "clearly affirmed that a closed entry policy had not been established with respect to Alaska services." Memorandum Opinion and Order (January 30, 1980) (App. No. 2 at 646).

6. The DOMSAT III Order did not grant Alascom a de jure monopoly. Memorandum Opinion and Order (January 30, 1980) (App. No. 2 at 646); Second Report and Order (November 30, 1982) (App. No. 4 at 798-801).

7. Nevertheless, Alascom continued to assert that it had been granted a de jure monopoly (see paragraphs 20, 21, 22, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 41, 44, 50, 53, 54, 55, 56, 57 and 62(a) through (bb)).

8. In opposing GCI's 214 applications, Alascom argued that it had a de jure monopoly (App. No. 29).

9. The Commission rejected Alascom's argument and granted GCI's applications stating that it had reviewed Alascom's de jure monopoly claim and found it was misplaced (App. No. 3 at 6).

10. The Commission denied Alascom's application for review of the GCI authorization Order stating that the issues raised by Alascom had been considered and rejected by the Commission on several occasions (App. No. 31 at 2).

11. The Commission has repeatedly and consistently rejected Alascom's claim that it had been granted a de jure monopoly (see paragraphs referenced in prior request).

12. Alascom's pattern or practice of opposing or seeking to limit competitive entry into the Alaska telecommunications market also frequently involved asserting that competition would result in "duplicative facilities," would adversely affect Alascom and Alaska ratepayers, would impair service to the public, and would generally not be in the publice interest (see paragraphs 15, 16, 17, 20, 21, 22, 23, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 43, 44, 45, 46, 47, 49, 50, 53, 54, 55, 56, 57 and 62(a) through (bb)).

13. The Commission repeatedly rejected this assertion that "monopoly is in the public interest" because Alascom did not adequately support its claims (see paragraphs referenced in prior request).

14. The Commission concluded in its August 30, 1980 Order in Docket No. 78-72 that open entry for the provision of MTS/WATS services was in the public interest but gave Alascom a final opportunity to submit evidence that competition in Alaska was not in the public interest (App. No. 32).

15. After taking over four months to file a study purporting to offer such evidence (App. No. 33), Alascom sought an additional four months to revise its study (App. No. 35).

16. The Commission examined Alascom's study which purportedly was the basis for its public interest argument and concluded, inter alia, that:

    (a) The record does not demonstrate that significant detrimental effects will result if entry is authorized over separately constructed facilities. Accordingly, we can find no basis for adopting Alascom's suggestion that entry be limited to the resale of WATS or to the lease of its private line facilities at rates which would include a charge to help support the cost of statewide service (App. No. 4 at 842).

    (b) Alascom's economic model lacks supporting documentation in many key assumptions. Its methodology appears to contradict the numbers provided and numerical calculations undertaken which undermine the credibility of the study (App. NO. 4 at 817).

    (c) The assumptions selected by Alascom almost invariably create the largest potential impact possible. This is true even where it is clear that the assumed circumstances will not occur. Given the deficiencies in the assumptions used by Alascom, the first phase traffic diversion estimates are unreliable and, at best, produce an exaggerated estimate of the potential worst case (App. No. 4 at 820).

(d) Alascom's full competitive entry model suffers from all the deficiencies as for the first phase model (App. No. 4 at 825).

(e) There is considerable uncertainty about the reliability that may be attached to the assumptions underlying the traffic-based multiplier used in the Full Competitive Entry Model (App. No. 4 at 825).

(f) Alascom's methodologies for developing a multiplier are defective, and there appears to be no rational basis for believing that the multipliers presented indicate the increased traffic diversion to be anticipated from a specialized carrier's network expansion. Accordingly, little weight can be attached to the traffic diversion estimates (App. No. 4 at 825).

(g) Alascom's financial impact model is flawed for reasons over and above the ramifications of the flaws that are already documented in the traffic diversion estimates (App. No. 4 at 826).

(h) Any detrimental effects alleged by Alascom have not been sufficiently documented (App. No. 4 at 826).

(i) We find nothing in the record that indicates that the authorization of entry in the Alaskan MTS-WATS market today would produce any irreversible effects which justify limiting the degree of entry at this time (App. No. 4 at 826).

17. Even after the Commission's rejections of its de jure monopoly and "monopoly is in the public interest" arguments, Alascom continued to make and/or incorporate these arguments in challenging GCI applications (App. No. 42, see paragraphs 49 and 50, supra).

18. Alascom filed an application for review of the Commission's order granting GCI's 214 application (App. No. 31), a Motion to Vacate Grant of GCI's 214 application (App. No. 44), a Petition to Reject or Suspend and Investigate GCI's Tariff No. 1 (App. No. 45), and a Request for Emergency Stay (App. No. 46).

19. The Commission denied Alascom's Petition to Reject GCI's Tariff (App. No. 47), and denied Alascom's Motion to Vacate Grant, its Request for Emergency Stay and its application for review (App. No. 31). The Commission stated that the issues raised by Alascom had previously been considered and rejected by the Commission on several occasions (App. No. 31 at 1-2).

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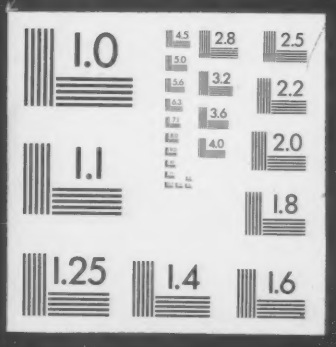
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